

MONTANA LEGISLATIVE HISTORY

Chapter 494 1993

Bill H _____ S 119

Original bill & history ☒ c

H. Committee on Judiciary

Hearing Date(s) 3-26 ☒ c

_____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 2-1 ☒ c

2-16 ☒ c

_____ c

_____ c

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILL NO. 119

INTRODUCED BY HALLIGAN

IN THE SENATE

JANUARY 11, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

FEBRUARY 17, 1993

COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1993

PRINTING REPORT.

SECOND READING, DO PASS.

FEBRUARY 19, 1993

ENGROSSING REPORT.

THIRD READING, PASSED.
AYES, 50; NOES, 0.

TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993

INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FIRST READING.

MARCH 30, 1993

COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

ON MOTION, RULES SUSPENDED TO ALLOW
BILL TO BE PLACED ON 2ND & 3RD
READING TOMORROW.

MARCH 31, 1993

SECOND READING, CONCURRED IN AS
AMENDED.

APRIL 1, 1993

THIRD READING, CONCURRED IN.
AYES, 87; NOES, 12.

RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 3, 1993

SECOND READING, AMENDMENTS

APRIL 5, 1993

CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

4/16	RETURNED TO SENATE WITH AMENDMENTS ON MOTION RULES SUSPENDED TO ALLOW LATE TRANSMITTAL OF AMENDMENTS	48	0
4/19	2ND READING AMENDMENTS CONCURRED	49	0
4/20	3RD READING AMENDMENTS CONCURRED	46	0
4/23	SIGNED BY PRESIDENT		
4/24	SIGNED BY SPEAKER		
4/24	TRANSMITTED TO GOVERNOR		
4/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 590		
	EFFECTIVE DATE: 07/01/94		

SB 119 INTRODUCED BY HALLIGAN
GENERALLY REVISE PROBATE AND ESTATE LAWS

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO JUDICIARY		
2/01	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	48	0
2/19	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO JUDICIARY		
2/23	FIRST READING		
3/26	HEARING		
3/30	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/30	ON MOTION RULES SUSPENDED TO ALLOW BILL TO BE PLACED ON 2ND AND 3RD READING TOMORROW		
3/31	2ND READING CONCURRED AS AMENDED	86	14
4/01	3RD READING CONCURRED	87	12
	RETURNED TO SENATE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	47	0
4/05	3RD READING AMENDMENTS CONCURRED	50	0
4/15	SIGNED BY PRESIDENT		
4/17	SIGNED BY SPEAKER		
4/19	TRANSMITTED TO GOVERNOR		
4/23	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 494		
	EFFECTIVE DATE: 10/01/93		

SB 120 INTRODUCED BY FRANKLIN
REVISE LAW ON TREATMENT AND DISCHARGE OF PATIENT IN A MENTAL
HEALTH HOSPITAL
BY REQUEST OF DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
1/29	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	48	0
2/19	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO HUMAN SERVICES & AGING		
2/23	FIRST READING		
3/05	HEARING		
3/09	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/13	2ND READING CONCURRED	94	3
3/16	3RD READING CONCURRED	98	2

1 *Senate* BILL NO. 119
 2 INTRODUCED BY *Holligan*
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
 5 LAW CONCERNING ESTATES, WILLS, AND DONATIVE TRANSFERS;
 6 REVISING THE ELECTIVE SHARE OF A SURVIVING SPOUSE;
 7 INCREASING EXEMPT PROPERTY; REVISING THE LAW CONCERNING
 8 WRITINGS INTENDED AS WILLS; REVISING THE RULES OF
 9 CONSTRUCTION APPLICABLE TO WILLS AND OTHER GOVERNING
 10 INSTRUMENTS; REVISING THE LAW CONCERNING PROBATE AND
 11 NONPROBATE TRANSFERS; PROVIDING FOR HONORARY TRUSTS AND
 12 TRUSTS FOR PETS; PROVIDING FOR NONPROBATE TRANSFERS ON
 13 DEATH; PROVIDING FOR PAYABLE-ON-DEATH DESIGNATIONS ON
 14 ACCOUNTS IN FINANCIAL INSTITUTIONS; PROVIDING FOR
 15 TRANSFER-ON-DEATH REGISTRATION FOR SECURITIES; REVISING THE
 16 STATUTORY FORM POWER OF ATTORNEY; AMENDING SECTIONS 3-7-402,
 17 70-1-703, 72-1-103, 72-1-108, 72-2-101, 72-2-102, 72-2-103,
 18 72-2-104, 72-2-105, 72-2-201, 72-2-202, 72-2-203, 72-2-204,
 19 72-2-205, 72-2-206, 72-2-207, 72-2-210, 72-2-212, 72-2-213,
 20 72-2-214, 72-2-301, 72-2-302, 72-2-304, 72-2-305, 72-2-306,
 21 72-2-311, 72-2-312, 72-2-313, 72-2-314, 72-2-321, 72-2-322,
 22 72-2-323, 72-2-401, 72-2-402, 72-2-502, 72-2-504, 72-2-512,
 23 72-2-513, 72-2-514, 72-2-515, 72-2-516, 72-2-517, 72-2-518,
 24 72-2-519, 72-2-601, 72-2-602, 72-2-702, 72-2-703, 72-2-704,
 25 72-2-705, 72-2-706, 72-2-707, 72-2-801, 72-2-802, 72-2-803,

1 72-2-804, 72-3-212, 72-3-213, 72-3-222, 72-11-101,
 2 72-11-102, 72-11-103, 72-11-104, 72-12-206, 72-16-313,
 3 72-31-201, 72-31-202, 72-31-203, 72-31-204, 72-31-205,
 4 72-31-206, 72-31-207, 72-31-208, 72-31-211, 72-31-212, AND
 5 72-36-206, MCA; REPEALING SECTIONS 32-1-442, 32-1-443,
 6 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303, 72-2-501,
 7 72-2-503, 72-2-511, 72-10-101, 72-10-102, 72-10-103,
 8 72-10-104, 72-10-105, 72-10-106, 72-10-107, 72-10-108,
 9 72-10-109, 72-10-110, 72-10-111, 72-10-112, 72-10-113,
 10 72-10-201, 72-10-202, 72-10-203, 72-10-204, 72-11-105,
 11 72-11-201, 72-11-202, 72-11-203, 72-11-204, 72-11-205,
 12 72-11-301, 72-11-302, 72-11-303, 72-11-304, 72-11-305,
 13 72-11-306, 72-11-307, 72-11-308, 72-11-309, 72-11-310,
 14 72-11-311, 72-11-312, 72-11-313, 72-11-314, 72-11-315,
 15 72-11-316, 72-11-317, 72-11-318, 72-11-319, 72-11-320,
 16 72-11-321, 72-11-322, 72-11-331, 72-11-332, 72-11-333,
 17 72-12-104, 72-12-201, 72-12-202, 72-12-203, 72-12-204,
 18 72-12-205, 72-12-301, 72-12-302, 72-12-501, 72-12-502,
 19 72-12-503, 72-12-601, 72-12-602, 72-12-603, 72-12-604,
 20 72-12-605, 72-12-701, 72-12-702, 72-12-703, 72-12-704,
 21 72-12-801, 72-12-802, 72-12-803, 72-12-901, 72-12-1001,
 22 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101, 72-13-102,
 23 72-13-103, 72-13-201, 72-13-202, 72-13-203, 72-13-301,
 24 72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, AND
 25 72-31-216, MCA; AND PROVIDING A RETROACTIVE APPLICABILITY

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 IT WILL NOT BE REPRINTED



1 DATE."

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 **Section 1.** Section 3-7-402, MCA, is amended to read:

5 "3-7-402. Disqualification of water judge or master.

6 (1) A water judge may withdraw or may disqualify himself--or
7 the water master in any proceeding or pertinent portion
8 thereof of a proceeding in which his the judge's or the
9 water master's impartiality might reasonably be questioned.

10 (2) A water judge may also withdraw or may disqualify
11 himself--or the water master in the following circumstances:

12 (a) if he the judge or the water master has a personal
13 bias or prejudice concerning a party of personal knowledge
14 or disputed evidentiary facts concerning the proceeding;

15 (b) if in private practice he the judge or the water
16 master served as a lawyer in the matter in controversy or a
17 lawyer with whom he the judge or the water master previously
18 practiced law served during such the association as a lawyer
19 concerning the matter or the judge or the lawyer has been a
20 material witness concerning it;

21 (c) if he the judge or the water master has served in
22 governmental employment and in such that capacity
23 participated as counsel, adviser, or material witness
24 concerning the proceeding or expressed an opinion concerning
25 the merits of the particular case in controversy;

1 (d) if he the judge or the water master knows that he
2 the judge or the water master, individually or as a
3 fiduciary, or his the judge's or the water master's spouse
4 or minor child residing in his the judge's or the water
5 master's household has a financial interest in the subject
6 matter in controversy or in a party to the proceeding or any
7 other interest that could be substantially affected by the
8 outcome of the proceeding; or

9 (e) if he the judge or the water master or his the
10 judge's or the water master's spouse or a person within the
11 third degree of relationship to any of them (as calculated
12 according to 72-11-101 through 72-11-105 72-11-104) or the
13 spouse of such a person:

14 (i) is a party to the proceeding or an officer,
15 director, or trustee of a party;

16 (ii) is known by the judge or water master to have an
17 interest that could be substantially affected by the outcome
18 of the proceeding;

19 (iii) is to the judge's or water master's knowledge
20 likely to be a material witness in the proceeding.

21 (3) A water judge should inform-himself be informed
22 about his the judge's and the water master's personal and
23 fiduciary financial interests and make a reasonable effort
24 to inform-himself be informed about the personal financial
25 interests of his the judge's and the water master's spouse

and minor children residing in his the judge's or the water master's respective household."

Section 2. Section 70-1-703, MCA, is amended to read:

"70-1-703. Conveyances to an estate. Unless a contrary intention appears, a devise, as defined in 72-1-103~~(b)~~, or an inter vivos conveyance of a property interest to the estate of a named or otherwise designated person passes the interest as if the interest had been owned by that person. The interest may pass to the heirs of that person, may be used to satisfy devises made in his that person's will, or may be used to satisfy claims for debts or taxes."

Section 3. Section 72-1-103, MCA, is amended to read:

"72-1-103. General definitions. Subject to additional definitions contained in the subsequent chapters which that are applicable to specific chapters, or parts, or sections and unless the context otherwise requires, in this-code chapters 1 through 5, the following definitions apply:

(1) "Agent" includes an attorney-in-fact under a durable or nondurable power of attorney, an individual authorized to make decisions concerning another's health care, and an individual authorized to make decisions for another under a natural death act.

~~(2)~~ (2) "Application" means a written request to the clerk for an order of informal probate or appointment under chapter 3, part 2.

~~(2)~~(3) "Beneficiary", as it relates to:

(a) a trust beneficiaries beneficiary, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer; and,

(b) as--it--relates-to a charitable trust, includes any person entitled to enforce the trust;

(c) a beneficiary of a beneficiary designation, refers to a beneficiary of:

(i) an insurance or annuity policy, an account with POD designation, or a security registered in beneficiary form (TOD);

(ii) a pension, profit-sharing, retirement, or similar benefit plan; or

(iii) any other nonprobate transfer at death; and

(d) a beneficiary designated in a governing instrument, includes a grantee of a deed; a devisee; a trust beneficiary; a beneficiary of a beneficiary designation; a donee, appointee, or taker in default of a power of appointment; and a person in whose favor a power of attorney or a power held in any individual, fiduciary, or representative capacity is exercised.

(4) "Beneficiary designation" refers to a governing instrument naming a beneficiary of:

(i) an insurance or annuity policy, an account with POD

1 designation, or a security registered in beneficiary form
2 (TOD);

3 (ii) a pension, profit-sharing, retirement, or similar
4 benefit plan; or

5 (iii) any other nonprobate transfer at death.

6 ~~†3†~~(5) "Child" includes any an individual entitled to
7 take as a child under this-code chapters 1 through 5 by
8 intestate succession from the parent whose relationship is
9 involved and excludes a person who is only a stepchild, a
10 foster child, a grandchild, or any more remote descendant.

11 ~~†4†~~(6) "Claims", in respect to estates of decedents and
12 protected persons, includes liabilities of the decedent or
13 protected person, whether arising in contract, in tort, or
14 otherwise, and liabilities of the estate which that arise at
15 or after the death of the decedent or after the appointment
16 of a conservator, including funeral expenses and expenses of
17 administration. The term does not include estate or
18 inheritance taxes, or demands or disputes regarding title of
19 a decedent or protected person to specific assets alleged to
20 be included in the estate.

21 ~~†5†~~(7) "Clerk" or "clerk of court" means the clerk of
22 the district court.

23 ~~†6†~~(8) "Conservator" means a person who is appointed by
24 a court to manage the estate of a protected person.

25 ~~†7†~~(9) "Court" means the district court in this state

1 having jurisdiction in matters relating to the affairs of
2 decedents. ~~This-court-in-this-state--is--known--as--district~~
3 ~~court-~~

4 (10) "Descendant" of an individual means all of the
5 individual's descendants of all generations, with the
6 relationship of parent and child at each generation being
7 determined by the definition of child and parent contained
8 in this section.

9 ~~†8†~~(11) "Devise" when used as a noun means a
10 testamentary disposition of real or personal property and
11 when used as a verb means to dispose of real or personal
12 property by will.

13 ~~†9†~~(12) "Devisee" means any a person designated in a
14 will to receive a devise. In For purposes of chapter 3, in
15 the case of a devise to an existing trust or trustee or to a
16 trustee on trust described by will, the trust or trustee is
17 the devisee and the beneficiaries are not devisees.

18 ~~†10†~~(13) "Disability" means cause for a protective order
19 as described by 72-5-409.

20 ~~†11†~~(14) "Distributee" means any person who has received
21 property of a decedent from his the decedent's personal
22 representative other than as a creditor or purchaser. A
23 testamentary trustee is a distributee only to the extent of
24 distributed assets or increment thereto remaining in his the
25 trustee's hands. A beneficiary of a testamentary trust to

whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

{12}{15} "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this code chapters 1 through 5 as originally constituted and as it exists from time to time during administration.

{13}{16} "Exempt property" means that property of a decedent's estate which that is described in 72-2-802.

{14}{17} "Fiduciary" includes a personal representative, guardian, conservator, and trustee.

{15}{18} "Foreign personal representative" means a personal representative of appointed by another jurisdiction.

{16}{19} "Formal proceedings" means those proceedings conducted before a judge with notice to interested persons.

{20} "Governing instrument" means a deed; will; trust; insurance or annuity policy; account with POD designation; security registered in beneficiary form (TOD); pension, profit-sharing, retirement, or similar benefit plan; instrument creating or exercising a power of appointment or a power of attorney; or dispositive, appointive, or nominative instrument of any similar type.

{17}{21} "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment but excludes one who is merely a guardian ad litem.

{18}{22} "Heirs", except as controlled by [section 70], means those persons, including the surviving spouse and the state, who are entitled under the statutes of intestate succession to the property of a decedent.

{19}{23} "Incapacitated person" is-as--defined has the meaning provided in 72-5-101.

{20}{24} "Informal proceedings" means those proceedings conducted without notice to interested persons by the clerk of court for probate of a will or appointment of a personal representative.

{21}{25} "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may-be-affected-by-the-proceeding. It The term also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

{22}{26} "Issue" of a person means ~~all--his--lineal~~
~~descendants-of-all-generations,--with--the--relationship--of~~
~~parent--and-child-at-each-generation-being-determined-by-the~~
~~definitions-of-child-and-parent-contained--in--this--code~~ a
 descendant as defined in subsection (10).

{27} "Joint tenants with the right of survivorship"
 includes co-owners of property held under circumstances that
 entitle one or more to the whole of the property on the
 death of the other or others but excludes forms of
 co-ownership registration in which the underlying ownership
 of each party is in proportion to that party's contribution.

{23}{28} "Lease" includes an oil, gas, coal, or other
 mineral lease.

{24}{29} "Letters" includes letters testamentary,
 letters of guardianship, letters of administration, and
 letters of conservatorship.

{25}{30} "Minor" means a person who is under 18 years of
 age.

{26}{31} "Mortgage" means any conveyance, agreement, or
 arrangement in which property is used as security.

{27}{32} "Nonresident decedent" means a decedent who was
 domiciled in another jurisdiction at the time of his death.

{28}{33} "Organization" includes means a corporation,
~~government-or-governmental-subdivision-or--agency,~~ business
 trust, estate, trust, partnership, joint venture, or

~~association, two-or-more-persons-having-a--joint--or--common~~
~~interest~~ government or governmental subdivision or agency,
 or any other legal or commercial entity.

{29}{34} "Parent" includes any person entitled to take,
 or who would be entitled to take if the child died without a
 will, as a parent under this-code chapters 1 through 5 by
 intestate succession from the child whose relationship is in
 question and excludes any person who is only a stepparent,
foster parent, or grandparent.

{35} "Payor" means a trustee, insurer, business entity,
 employer, government, governmental agency or subdivision, or
any other person authorized or obligated by law or a
governing instrument to make payments.

{30}{36} "Person" means an individual, a corporation, an
 organization, or other legal entity.

{31}{37} "Personal representative" includes executor,
 administrator, successor personal representative, special
 administrator, and persons who perform substantially the
 same function under the law governing their status. "General
 personal representative" excludes special administrator.

{32}{38} "Petition" means a written request to the court
 for an order after notice.

{33}{39} "Proceeding" includes action at law and suit in
 equity.

{34}{40} "Property" includes both real and personal

1 property or any interest therein in that property and means
2 anything that may be the subject of ownership.

3 {35}{41} "Protected person" is--as--defined has the
4 meaning provided in 72-5-101.

5 {36}{42} "Protective proceeding" is-as-defined has the
6 meaning provided in 72-5-101.

7 {37}{43} "Securities Security" includes any note;
8 stock; treasury stock; bond; debenture; evidence of
9 indebtedness; certificate of interest or participation in
10 an oil, gas, or mining title or lease or in payments out of
11 production under such a title or lease; collateral trust
12 certificate; transferable share; voting trust certificate;
13 or, in general, any interest or instrument commonly known as
14 a security; or any certificate of interest or
15 participation; or any temporary or interim certificate,
16 receipt, or certificate of deposit for, or any warrant or
17 right to subscribe to or purchase any of the foregoing.

18 {38}{44} "Settlement", in reference to a decedent's
19 estate, includes the full process of administration,
20 distribution, and closing.

21 {39}{45} "Special administrator" means a personal
22 representative as described by chapter 3, part 7.

23 {40}{46} "State" includes--any means a state of the
24 United States, the District of Columbia, the Commonwealth of
25 Puerto Rico, and or any territory or insular possession

1 subject to the legislative--authority jurisdiction of the
2 United States.

3 {41}{47} "Successor personal representative" means a
4 personal representative, other than a special administrator,
5 who is appointed to succeed a previously appointed personal
6 representative.

7 {42}{48} "Successors" means those persons, other than
8 creditors, who are entitled to property of a decedent under
9 his the decedent's will or this-code chapters 1 through 5.

10 {43}{49} "Supervised administration" refers to the
11 proceedings described in chapter 3, part 4.

12 {50} "Survive", except for purposes of [sections 103
13 through 112], means that an individual has neither
14 predeceased an event, including the death of another
15 individual, nor is considered to have predeceased an event
16 under 72-2-205 or [section 62]. The term includes its
17 derivatives, such as "survives", "survived", "survivor", and
18 "surviving".

19 {44}{51} "Testacy proceeding" means a proceeding to
20 establish a will or determine intestacy.

21 {52} "Testator" includes an individual of either sex.

22 {45}{53} "Trust" includes any an express trust, private
23 or charitable, with additions thereto, wherever and however
24 created. It The term also includes a trust created or
25 determined by judgment or decree under which the trust is to

1 be administered in the manner of an express trust. "Trust"
 2 The term excludes other constructive trusts; and it excludes
 3 resulting trusts; conservatorships; personal
 4 representatives; trust accounts as defined in [sections 83
 5 through 112]; custodial arrangements pursuant to chapter 26
 6 of this title; business trusts providing for certificates
 7 to be issued to beneficiaries; common trust funds; voting
 8 trusts; security arrangements; liquidation trusts; and
 9 trusts for the primary purpose of paying debts, dividends,
 10 interest, salaries, wages, profits, pensions, or employee
 11 benefits of any kind; and any arrangement under which a
 12 person is nominee or escrowee for another.

13 {46}{54} "Trustee" includes an original, additional, or
 14 successor trustee, whether or not appointed or confirmed by
 15 court.

16 {47}{55} "Ward" is--as--defined means an individual
 17 described in 72-5-101.

18 {48}{56} "Will" includes codicil and any testamentary
 19 instrument which that merely appoints an executor, or
 20 revokes or revises another will, nominates a guardian, or
 21 expressly excludes or limits the right of an individual or
 22 class to succeed to property of the decedent passing by
 23 intestate succession."

24 **Section 4.** Section 72-1-108, MCA, is amended to read:

25 "72-1-108. ~~Evidential rules applicable-----evidence--as~~

1 to Evidence of death or status. {1} In proceedings-under
 2 ~~this-code~~ addition to the rules of evidence in courts of
 3 general jurisdiction, including-any-relating-to-simultaneous
 4 deaths,--are-applicable-unless-specifically-displaced-by-the
 5 code= the following rules relating to a determination of
 6 death or status apply:

7 {2}{1} In--addition,--the--following--rules--relating--to
 8 determination-of-death-and--status--are--applicable= Death
 9 occurs when an individual is determined to be dead under
 10 50-22-101.

11 {a}{2} A certified or authenticated copy of a death
 12 certificate purporting to be issued by an official or agency
 13 of the place where the death purportedly occurred is prima
 14 facie proof evidence of the fact, place, date, and time of
 15 death and the identity of the decedent.

16 {b}{3} A certified or authenticated copy of any record
 17 or report of a governmental agency, domestic or foreign,
 18 that a--person an individual is missing, detained, dead, or
 19 alive is prima facie evidence of the status and of the
 20 dates, circumstances, and places disclosed by the record or
 21 report.

22 {c}{4} In the absence of prima facie evidence of death
 23 under subsection (2){a} or {2}{b} {3}, the fact of death may
 24 be established by clear and convincing evidence, including
 25 circumstantial evidence.

1 ~~{d}~~(5) A--person An individual whose death is not
 2 established under subsections (2)(a) through (2)(c) (4), who
 3 is absent for a continuous period of 5 years, during which
 4 he the individual has not been heard from, and whose absence
 5 is not satisfactorily explained after diligent search or
 6 inquiry is presumed to be dead. His The individual's death
 7 is presumed to have occurred at the end of the period unless
 8 there is sufficient evidence for determining that death
 9 occurred earlier.

10 (6) In the absence of evidence disputing the time of
 11 death stated on a document described in subsection (2) or
 12 (3), a document described in subsection (2) or (3) that
 13 states a time of death 120 hours or more after the time of
 14 death of another individual, however the time of death of
 15 the other individual is determined, establishes by clear and
 16 convincing evidence that the individual survived the other
 17 individual by 120 hours."

18 **Section 5.** Section 72-2-101, MCA, is amended to read:

19 *72-2-101. Renunciation--of--succession Disclaimer of
 20 property interests. (1) (a) A person or his---personat
 21 representative--or the representative of an-incapacitated-or
 22 protected a person who--is--an--heir,---devisee,---person
 23 succeeding---to--a--renounced--interest,---donee,---appointee,
 24 grantee, recipient, or beneficiary under a--trust--or--other
 25 nontestamentary--instrument--or under a power of appointment

1 exercised-by-a-testamentary-or--nontestamentary--instrument,
 2 surviving---joint---owner--or--surviving--joint--tenant,--or
 3 beneficiary--or--owner--of--an--insurance--contract--or--any
 4 incident-of-ownership--therein--may--renounce, to whom an
 5 interest in or with respect to property or an interest in
 6 the property devolves by whatever means may disclaim it in
 7 whole or in part, the right of succession to any property or
 8 interest therein, including a future interest, by delivering
 9 or filing a written renunciation disclaimer under this
 10 section. The instrument shall:

11 (a)--describe the property or interest renounced;
 12 (b)--be signed by the person renouncing; and
 13 (c)--declare the renunciation and the extent thereof.

14 (b) The right to disclaim exists notwithstanding:

15 (i) any limitation on the interest of the disclaimant
 16 in the nature of a spendthrift provision or similar
 17 restriction; or

18 (ii) any restriction or limitation on the right to
 19 disclaim contained in the governing instrument.

20 (c) For purposes of this subsection (1), the
 21 "representative of a person" includes a personal
 22 representative of a decedent; a conservator of a disabled
 23 person; a guardian of a minor or incapacitated person; a
 24 guardian ad litem of a minor, an incapacitated person, an
 25 unborn person, an unascertained person, or a person whose

identity or address is unknown; and an agent acting on behalf of the person within the authority of a power of attorney. The representative of a person may rely on a general family benefit accruing to the living members of the represented person's family as a basis for making a disclaimer.

(2) ~~The court may direct or permit a trustee under a testamentary or nontestamentary instrument to renounce, modify, amend, or otherwise deviate from any restriction on or power of administration, management, or allocation of benefit upon finding that such restriction on the exercise of the power may defeat or impair the accomplishment of the purposes of the trust, whether by the imposition of tax, the allocation of beneficial interest inconsistent with such purposes, or by other reason. Such authority shall be exercised after hearing and upon notice to all known persons beneficially interested in such trust, in the manner directed by the court.~~ The following rules govern the time when a disclaimer must be filed or delivered:

(a) If the property or interest has devolved to the disclaimant under a testamentary instrument or by the laws of intestacy, the disclaimer must be filed, if of a present interest, not later than 9 months after the death of the deceased owner or deceased donee of a power of appointment and, if of a future interest, not later than 9 months after

the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. The disclaimer must be filed in the court of the county in which proceedings for the administration of the estate of the deceased owner or deceased donee of the power have been commenced. A copy of the disclaimer must be delivered in person or mailed by certified mail, return receipt requested, to any personal representative or other fiduciary of the decedent or donee of the power.

(b) If a property or interest has devolved to the disclaimant under a nontestamentary instrument or contract, the disclaimer must be delivered or filed, if of a present interest, not later than 9 months after the effective date of the nontestamentary instrument or contract and, if of a future interest, not later than 9 months after the event determining that the taker of the property or interest is finally ascertained and the taker's interest is indefeasibly vested. If the person entitled to disclaim does not know of the existence of the interest, the disclaimer must be delivered or filed not later than 9 months after the person learns of the existence of the interest. The effective date of a revocable instrument or contract is the date on which the maker no longer has power to revoke it or to transfer to the maker or another the entire legal and equitable

1 ownership of the interest. The disclaimer or a copy of the
 2 disclaimer must be delivered in person or mailed by
 3 certified mail, return receipt requested, to the person who
 4 has legal title to or possession of the interest disclaimed.

5 (c) A surviving joint tenant may disclaim as a separate
 6 interest any property or interest in property devolving to
 7 the joint tenant by right of survivorship. A surviving joint
 8 tenant may disclaim the entire interest in any property or
 9 interest in the property that is the subject of a joint
 10 tenancy devolving to the joint tenant if the joint tenancy
 11 was created by act of a deceased joint tenant, the survivor
 12 did not join in creating the joint tenancy, and the survivor
 13 has not accepted a benefit under it.

14 (3)(d) The instrument of renunciation must be received
 15 by the transferor of the interest, his legal representative,
 16 the personal representative of a deceased transferor, the
 17 trustee of any trust in which the interest being renounced
 18 exists, or the holder of the legal title to the property to
 19 which the interest relates. To be effective for purposes of
 20 determining inheritance and estate taxes, the instrument
 21 must be received not later than the date which is 9 months
 22 after the later of the date on which the transfer creating
 23 the interest in a person is made or the date on which the
 24 person attains 18 years of age, if the circumstances that
 25 establish the right of a person to renounce an interest

1 arise as a result of the death of an individual, the
 2 instrument must also be filed in the court of the county
 3 where proceedings concerning the decedent's estate are
 4 pending or where they would be pending if commenced. If real
 5 property or an interest therein in the property is renounced
 6 disclaimed, a copy of the renunciation disclaimer may be
 7 recorded in the office of the county clerk and recorder of
 8 the county in which the real estate is situated property or
 9 interest disclaimed is located. No person entitled to a copy
 10 of the instrument is liable for any proper distribution or
 11 disposition made without actual notice of the renunciation,
 12 and no person making a proper distribution or disposition in
 13 reliance upon the renunciation is liable for any such
 14 distribution or disposition in the absence of actual notice
 15 that an action has been instituted contesting the validity
 16 of the renunciation.

17 (3) The disclaimer must:

18 (a) describe the property or interest disclaimed;

19 (b) declare the disclaimer and extent of the
 20 disclaimer; and

21 (c) be signed by the disclaimant.

22 (4) The following are the effects of a disclaimer:

23 (a) Unless the transferor of the interest has otherwise
 24 provided, the If property or an interest renounced in
 25 property devolves to a disclaimant under a testamentary

1 instrument, under a power of appointment exercised by a
 2 testamentary instrument, or under the laws of intestacy and
 3 the decedent has not provided for another disposition of
 4 that interest, should it be disclaimed, or of disclaimed or
 5 failed interests in general, the disclaimed interest
 6 devolves as though if the person-renouncing disclaimant had
 7 predeceased the decedent or, but if the appointment was
 8 exercised-by-a by law or under the testamentary instrument,
 9 as though the person-renouncing had predeceased the donee of
 10 the power the descendants of the disclaimant would take the
 11 disclaimant's share by representation were the disclaimant
 12 to predecease the decedent, the disclaimed interest passes
 13 by representation to the descendants of the disclaimant who
 14 survive the decedent. A future interest that takes effect in
 15 possession or enjoyment after the termination of the estate
 16 or interest renounced disclaimed takes effect as though if
 17 the person--renouncing disclaimant had predeceased the
 18 decedent or--the--donee--of--the--power. A renunciation
 19 disclaimer relates back for all purposes to the date of the
 20 death of the decedent or the donee of the power.

21 (b) If property or an interest in property devolves to
 22 a disclaimant under a nontestamentary instrument or contract
 23 and the instrument or contract does not provide for another
 24 disposition of that interest, should it be disclaimed, or of
 25 disclaimed or failed interests in general, the disclaimed

1 interest devolves as if the disclaimant had predeceased the
 2 effective date of the instrument or contract, but if by law
 3 or under the nontestamentary instrument or contract the
 4 descendants of the disclaimant would take the disclaimant's
 5 share by representation were the disclaimant to predecease
 6 the effective date of the instrument, the disclaimed
 7 interest passes by representation to the descendants of the
 8 disclaimant who survive the effective date of the
 9 instrument. A disclaimer relates back for all purposes to
 10 that date. A future interest that takes effect in possession
 11 or enjoyment at or after the termination of the disclaimed
 12 interest takes effect as if the disclaimant had died before
 13 the effective date of the instrument or contract that
 14 transferred the disclaimed interest.

15 (c) The disclaimer or the written waiver of the right
 16 to disclaim is binding upon the disclaimant or person
 17 waiving and on all persons claiming through or under either
 18 of them.

19 (5) (a) The right to renounce disclaim property or an
 20 interest therein in the property is barred by:

21 (i) (a) an assignment, conveyance, encumbrance, pledge,
 22 or transfer of the property or interest, or a contract
 23 therefor;

24 (i) (b) a written waiver of the right to renounce
 25 disclaim;

1 ~~{iii}~~(c) an acceptance of the property or interest or
 2 benefit thereunder under it; or
 3 ~~{iv}~~(d) a sale of the property or interest under
 4 judicial sale made before the renunciation--is-effected
 5 disclaimer is made.
 6 ~~{b}~~--The right to renounce--exists--notwithstanding--any
 7 limitation--on--the interest of the person renouncing in the
 8 nature of a spendthrift provision or similar restriction;
 9 ~~{c}~~--A renunciation or a written waiver of the right--to
 10 renounce--is--binding--upon--the person renouncing or person
 11 waiving and all persons claiming through or under him;
 12 (6) This section does not abridge the right of a person
 13 to waive, release, disclaim, or renounce property or an
 14 interest therein in property under any other statute.
 15 (7) Within--30--days of receipt of a written instrument
 16 of renunciation by--the--transferor--of--the--interest;--the
 17 renouncer;--his--legal--representative;--the--personal
 18 representative of the decedent; the trustee of any trust--in
 19 which--the interest being renounced exists; or the holder of
 20 the legal title to--the--property--to--which--the--interest
 21 relates;--as--the--case--may--be; shall attempt to notify in
 22 writing those persons who are known or--ascertainable--with
 23 reasonable--diligence--who--are--recipients--or--potential
 24 recipients of the renounced interest of the renunciation and
 25 the interest--or--potential--interest--such--recipient--will

1 ~~receive as a result of the renunciation:~~
 2 ~~{8}~~--Any An interest in property which that exists on
 3 July 17, 1983, may be renounced after--October--17--1983,--as
 4 provided--in this section;--An interest that has arisen prior
 5 to July 17, 1983,--in--any--person--other--than--the--person
 6 renouncing--is--not destroyed or diminished by any action of
 7 the--person--renouncing--taken--under--this--section [the
 8 effective date of this act] as to which, if a present
 9 interest, the time for filing a disclaimer under this
 10 section has not expired or, if a future interest, the
 11 interest has not become indefeasibly vested or the taker
 12 finally ascertained may be disclaimed within 9 months after
 13 [the effective date of this act]."
 14 **Section 6.** Section 72-2-102, MCA, is amended to read:
 15 "72-2-102. Waiver of right to elect and of other rights
 16 by spouse. (1) The right of election of a surviving spouse
 17 and the rights of the surviving spouse to homestead
 18 allowance, exempt property, and family allowance or any of
 19 them may be waived, wholly or partially, before or after
 20 marriage, by a written contract, agreement, or waiver signed
 21 by the party waiving after fair disclosure surviving spouse.
 22 (2) A surviving spouse's waiver is not enforceable if
 23 the surviving spouse proves that:
 24 (a) the surviving spouse did not execute the waiver
 25 voluntarily; or

(b) the waiver was unconscionable when it was executed and, before execution of the waiver, the surviving spouse:

(i) was not provided a fair and reasonable disclosure of the property or financial obligations of the decedent;

(ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the decedent beyond the disclosure provided; and

(iii) did not have or reasonably could not have had an adequate knowledge of the property or financial obligations of the decedent.

(3) An issue of unconscionability of a waiver is for decision by the court as a matter of law.

(4) Unless it provides to the contrary, a waiver of "all rights", {for equivalent language}, in the property or estate of a present or prospective spouse or a complete property settlement entered into after or in anticipation of separation or divorce is a waiver of all rights to elective share, homestead allowance, exempt property, and family allowance by each spouse in the property of the other and a renunciation by each of all benefits which that would otherwise pass to him that spouse from the other by intestate succession or by virtue of ~~the provisions of~~ any will executed before the waiver or property settlement."

Section 7. Section 72-2-103, MCA, is amended to read:

"72-2-103. Effect of divorce, annulment, or decree of separation decree. (1) A--person An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage he the individual is married to the decedent at the time of death. A decree of separation which that does not terminate the status of husband and wife is not a divorce for purposes of this section.

(2) For purposes of chapter 2, parts 2, 6, 7, and 8 and of 72-3-501 through 72-3-508, a surviving spouse does not include:

(a) a-person an individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently they participate in a marriage ceremony purporting to marry each to the other or subsequently live together as man husband and wife;

(b) a-person an individual who, following a an invalid decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person individual; or

(c) a--person an individual who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights."

Section 8. Section 72-2-104, MCA, is amended to read:

"72-2-104. Homicide---effect Effect of homicide on intestate succession, wills, trusts, joint assets, life insurance, and beneficiary designations. (1) For purposes of this section, the following definitions apply:

(a) "Disposition or appointment of property" includes a transfer of an item of property or any other benefit to a beneficiary designated in a governing instrument.

(b) "Governing instrument" means a governing instrument executed by the decedent.

(c) "Revocable", with respect to a disposition, appointment, provision, or nomination, means one under which the decedent, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the killer, whether or not the decedent was then empowered to designate the decedent in place of the decedent's killer and whether or not the decedent then had capacity to exercise the power.

{1}(2) A---surviving---spouse,---heir,---or---devisee An individual who feloniously and intentionally kills the decedent is-not-entitled-to-any forfeits all benefits under the---will---or---under this chapter,---and---the-estate-of-the decedent---passes-as-if---the---killer---had---predeceased---the decedent.---Property-appointed-by-the-will-of-the-decedent---to

or-for-the-benefit-of-the-killer-passes-as-if-the-killer-had predeceased---the---decedent with respect to the decedent's estate, including an intestate share, an elective share, an omitted spouse's or child's share, a homestead allowance, exempt property, and a family allowance. If the decedent died intestate, the decedent's intestate estate passes as if the killer disclaimed the killer's intestate share.

{2}---Any---joint-tenant-who-feloniously-and-intentionally kills-another-joint-tenant-thereby-effects---a---severance---of the---interest-of---the---decedent---so---that---the-share-of-the decedent-passes-as-his-property-and-the-killer-has-no-rights by-survivorship.---This-provision-applies-to---joint---tenancies in---real---and---personal---property,---joint-accounts-in-banks, savings-and-loan---associations,---credit-unions,---and---other institutions,---and---any---other---form---of---co-ownership---with survivorship-incidents.

{3}---A---named---beneficiary---of---a---bond,---life-insurance policy,---or-other-contractual-arrangement-who-feloniously-and intentionally-kills-the-principal-obiigee-or-the-person-upon whose-life-the-policy-is---issued-is---not---entitled---to---any benefit---under---the---bond,---policy,---or---other---contractual arrangement,---and-it-becomes-payable-as-though-the-killer-had predeceased-the-decedent.

{4}---Any-other-acquisition-of-property---or---interest---by the---killer---shall---be---treated---in---accordance---with---the

principles of this section:

{5}--A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section in the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

{6}--This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

(3) The felonious and intentional killing of the decedent:

(a) revokes any revocable:

(i) disposition or appointment of property made by the decedent to the killer in a governing instrument;

(ii) provision in a governing instrument conferring a general or nongeneral power of appointment on the killer;

and

(iii) nomination of the killer in a governing instrument, nominating or appointing the killer to serve in any fiduciary or representative capacity, including a personal representative, executor, trustee, or agent; and

(b) severs the interests of the decedent and killer in property held by them at the time of the killing as joint tenants with the right of survivorship and transforms the interests of the decedent and killer into tenancies in common.

(4) A severance under subsection (3)(b) does not affect any third-party interest in property acquired for value and in good faith reliance on an apparent title by survivorship in the killer unless a writing declaring the severance has been noted, registered, filed, or recorded in records appropriate to the kind and location of the property, which records are relied upon, in the ordinary course of transactions involving such property, as evidence of ownership.

(5) Provisions of a governing instrument that are not revoked by this section are given effect as if the killer disclaimed all revoked provisions or, in the case of a revoked nomination in a fiduciary or representative capacity, as if the killer predeceased the decedent.

(6) A wrongful acquisition of property or interest by a

killer not covered by this section must be treated in accordance with the principle that a killer cannot profit from the killer's wrong.

(7) After all right to appeal has been exhausted, a judgment of conviction establishing criminal accountability for the felonious and intentional killing of the decedent conclusively establishes the convicted individual as the decedent's killer for purposes of this section. In the absence of a conviction, the court, upon the petition of an interested person, shall determine whether, under the preponderance of evidence standard, the individual would be found criminally accountable for the felonious and intentional killing of the decedent. If the court determines that under that standard the individual would be found criminally accountable for the felonious and intentional killing of the decedent, the determination conclusively establishes that individual as the decedent's killer for purposes of this section.

(8) (a) A payor or other third party is not liable for having made a payment or transferred an item of property or any other benefit to a beneficiary designated in a governing instrument affected by an intentional and felonious killing, or for having taken any other action in good faith reliance on the validity of the governing instrument, upon request and satisfactory proof of the decedent's death, before the

payor or other third party received written notice of a claimed forfeiture or revocation under this section. A payor or other third party is liable for a payment made or other action taken after the payor or other third party received written notice of a claimed forfeiture or revocation under this section.

(b) Written notice of a claimed forfeiture or revocation under subsection (8)(a) must be mailed to the payor's or other third party's main office or home by certified mail, return receipt requested, or served upon the payor or other third party in the same manner as a summons in a civil action. Upon receipt of written notice of a claimed forfeiture or revocation under this section, a payor or other third party may pay any amount owed or transfer or deposit any item of property held by it to or with the court having jurisdiction of the probate proceedings relating to the decedent's estate or, if no proceedings have been commenced, to or with the court having jurisdiction of probate proceedings relating to decedents' estates located in the county of the decedent's residence. The court shall hold the funds or item of property and, upon its determination under this section, shall order disbursement in accordance with the determination. Payments, transfers, or deposits made to or with the court discharge the payor or other third party from all claims for the value of amounts

1 paid to or items of property transferred to or deposited
2 with the court.

3 (9) (a) A person who purchases property for value and
4 without notice or who receives a payment or other item of
5 property in partial or full satisfaction of a legally
6 enforceable obligation is neither obligated under this
7 section to return the payment, item of property, or benefit
8 nor liable under this section for the amount of the payment
9 or the value of the item of property or benefit. However, a
10 person who, not for value, receives a payment, item of
11 property, or other benefit to which the person is not
12 entitled under this section is obligated to return the
13 payment, item of property, or benefit, or is personally
14 liable for the amount of the payment or the value of the
15 item of property or benefit, to the person who is entitled
16 to it under this section.

17 (b) If this section or any part of this section is
18 preempted by federal law with respect to a payment, an item
19 of property, or any other benefit covered by this section, a
20 person who, not for value, receives the payment, item of
21 property, or other benefit to which the person is not
22 entitled under this section is obligated to return the
23 payment, item of property, or benefit, or is personally
24 liable for the amount of the payment or the value of the
25 item of property or benefit, to the person who would have

1 been entitled to it were this section or part of this
2 section not preempted.

3 ~~(7)~~(10) For the purposes of this section, a felonious
4 and intentional killing includes a deliberate homicide as
5 defined in 45-5-102 and a mitigated deliberate homicide as
6 defined in 45-5-103."

7 **Section 9.** Section 72-2-105, MCA, is amended to read:

8 "72-2-105. Contracts concerning succession. (1) A
9 contract to make a will or devise or not to revoke a will or
10 devise or to die intestate, if executed after July 1, 1975,
11 can may be established only by:

12 (a) provisions of a will stating material provisions of
13 the contract;

14 (b) an express reference in a will to a contract and
15 extrinsic evidence proving the terms of the contract; or

16 (c) a writing signed by the decedent evidencing the
17 contract.

18 (2) The execution of a joint will or mutual wills does
19 not create a presumption of a contract not to revoke the
20 will or wills."

21 **Section 10.** Section 72-2-201, MCA, is amended to read:

22 "72-2-201. Intestate estate. (1) Any part of the a
23 decedent's estate of-a-decedent not effectively disposed of
24 by his will passes by intestate succession to his the
25 decedent's heirs as prescribed in the-following-sections-of

1 this code chapters 1 through 5, except as modified by the
 2 decedent's will.

3 (2) A decedent may by will expressly exclude or limit
 4 the right of an individual or class to succeed to property
 5 of the decedent passing by intestate succession. If that
 6 individual or a member of that class survives the decedent,
 7 the share of the decedent's intestate estate to which that
 8 individual or class would have succeeded passes as if that
 9 individual or each member of that class had disclaimed an
 10 intestate share."

11 **Section 11.** Section 72-2-202, MCA, is amended to read:

12 "72-2-202. Share of spouse. The intestate share of the
 13 a decedent's surviving spouse is:

14 (1) if--there--is--no--surviving--issue--or--if--there--are
 15 surviving--issue--all--of--whom--are--issue--of--the--surviving
 16 spouse--also, the entire remaining intestate estate if:

17 (a) no descendant or parent of the decedent survives
 18 the decedent; or

19 (2)(b) if--there--are--surviving--issue--one--or--more--of--whom
 20 are--not--issue all of the decedent's surviving descendants
 21 are also descendants of the surviving spouse,--as--follows:

22 (a)--if--there--is--surviving--only--one--child--or--the--issue
 23 of--one--child, one-half of the intestate estate;

24 (b)--if--there--are--surviving--two--or--more--children,--the
 25 issue--of--two--or--more--deceased--children,--or--one--or--more

1 children--and--the--issue--of--one--or--more--deceased--children;
 2 one-third--of--the--intestate--estate and there is no other
 3 descendant of the surviving spouse who survives the
 4 decedent;

5 (2) the first \$200,000, plus three-fourths of any
 6 balance of the intestate estate, if no descendant of the
 7 decedent survives the decedent but a parent of the decedent
 8 survives the decedent;

9 (3) the first \$150,000, plus one-half of any balance of
 10 the intestate estate, if all of the decedent's surviving
 11 descendants are also descendants of the surviving spouse and
 12 the surviving spouse has one or more surviving descendants
 13 who are not descendants of the decedent;

14 (4) the first \$100,000, plus one-half of any balance of
 15 the intestate estate, if one or more of the decedent's
 16 surviving descendants are not descendants of the surviving
 17 spouse."

18 **Section 12.** Section 72-2-203, MCA, is amended to read:

19 "72-2-203. Share of heirs other than surviving spouse.
 20 The Any part of the intestate estate not passing to the
 21 decedent's surviving spouse under 72-2-202, or the entire
 22 intestate estate if there is no surviving spouse, passes as
 23 follows in the following order to the individuals designated
 24 below who survive the decedent:

25 (1) to the issue--of--the--decedent,--if--they--are--all--of

the same degree of kinship to the decedent, they take equally, but if of unequal degree, then those of more remote degree take decedent's descendants by representation;

(2) if there is no surviving issue descendant, to his parent or the decedent's parents equally if both survive or to the surviving parent;

(3) if there is no surviving issue or descendant or parent, to the brothers and sisters and the children or grandchildren of any deceased brother or sister, descendants of the decedent's parents or either of them by representation;

(4) if there is no surviving issue descendant, parent, brother, sister, or children or grandchildren of a deceased brother or sister, to the next of kin in equal degree, except that where there are two or more collateral kindred in equal degree but claiming through different ancestors, those who claim through the nearer ancestors must be preferred to those claiming through an ancestor more remote descendant of a parent and the decedent is:

(a) survived by one or more grandparents or descendants of grandparents:

(i) one-half to:

(A) the decedent's paternal grandparents equally if both survive;

(B) the surviving paternal grandparent; or

(C) the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and

(ii) the other one-half to the decedent's maternal relatives in the same manner; or

(b) not survived by a grandparent or descendant of a grandparent on either the paternal or the maternal side, the entire estate to the decedent's relatives on the other side in the same manner as the half."

Section 13. Section 72-2-204, MCA, is amended to read:

"72-2-204. Representation. (1) As used in this section, the following definitions apply:

(a) "Deceased descendant", "deceased parent", or "deceased grandparent" means a descendant, parent, or grandparent who either predeceased the decedent or is considered to have predeceased the decedent under 72-2-205.

(b) "Surviving descendant" means a descendant who neither predeceased the decedent nor is considered to have predeceased the decedent under 72-2-205.

(2) (a) If representation is called for by this code, under 72-2-203(1), a decedent's intestate estate or a part of the intestate estate passes by representation to the decedent's descendants, the estate or part of the estate is divided into decedent's descendants and the estate or part of the estate is divided into as many equal shares as there

1 are:

2 (i) surviving heirs descendants in the nearest-degree
 3 of-kinship-and-deceased-persons-in-the-same-degree-who--left
 4 issue--who--survive-the-decedent,--each-surviving-heir-in-the
 5 nearest-degree-receiving-one-share-and--the--share--of--each
 6 deceased--person--in-the-same-degree-being-divided-among-his
 7 issue-in-the-same-manner generation nearest to the decedent
 8 that contains one or more surviving descendants; and

9 (ii) deceased descendants in the same generation who
 10 left surviving descendants, if any.

11 (b) Each surviving descendant in the nearest generation
 12 is allocated one share. The remaining shares, if any, are
 13 combined and then divided in the same manner among the
 14 surviving descendants of the deceased descendants as if the
 15 surviving descendants who were allocated a share and their
 16 surviving descendants had predeceased the decedent.

17 (3) (a) If, under 72-2-203(3) or (4), a decedent's
 18 intestate estate or a part of the intestate estate passes by
 19 representation to the descendants of the decedent's deceased
 20 parents or either of them or to the descendants of the
 21 decedent's deceased paternal or maternal grandparents or
 22 either of them, the estate or part of the estate is divided
 23 into as many equal shares as there are:

24 (i) surviving descendants in the generation nearest the
 25 deceased parents or either of them or nearest the deceased

1 grandparents or either of them that contains one or more
 2 surviving descendants; and

3 (ii) deceased descendants in the same generation who
 4 left surviving descendants, if any.

5 (b) Each surviving descendant in the nearest generation
 6 is allocated one share. The remaining shares, if any, are
 7 combined and then divided in the same manner among the
 8 surviving descendants of the deceased descendants as if the
 9 surviving descendants who were allocated a share and their
 10 surviving descendants had predeceased the decedent."

11 **Section 14.** Section 72-2-205, MCA, is amended to read:

12 "72-2-205. Requirement that heir survive decedent by
 13 for one hundred twenty hours. Any-person An individual who
 14 fails to survive the decedent by 120 hours is deemed
 15 considered to have predeceased the decedent for purposes of
 16 homestead allowance, exempt property, and intestate
 17 succession, and the decedent's heirs are determined
 18 accordingly. If the-time-of-death-of-the-decedent-or-of-the
 19 person-who-would-otherwise-be-an-heir-or-the-times-of--death
 20 of--both--cannot--be--determined--and it cannot--be is not
 21 established by clear and convincing evidence that the-person
 22 an individual who would otherwise be an heir has survived
 23 the decedent by 120 hours, it is deemed considered that the
 24 person individual failed to survive for the required period.
 25 This section is not to be applied where if its application

1 would result in a taking of intestate estate by the state
2 under 72-2-207."

3 **Section 15.** Section 72-2-206, MCA, is amended to read:

4 "72-2-206. Advancements. (1) If a person an individual
5 dies intestate as to all his or a portion of the
6 individual's estate, property which he the decedent gave in
7 his during the decedent's lifetime to an individual who, at
8 the decedent's death, is an heir is treated as an
9 advancement against the latter's heir's intestate share of
10 the-estate only if:

11 (a) the decedent declared in a contemporaneous writing
12 by--the--decedent or the heir acknowledged in writing by-the
13 heir-to-be that the gift is an advancement; or

14 (b) the decedent's contemporaneous writing or the
15 heir's written acknowledgment otherwise indicates that the
16 gift is to be taken into account in computing the division
17 and distribution of the decedent's intestate estate.

18 (2) For this--purpose purposes of subsection (1), the
19 property advanced is valued as of the time the heir came
20 into possession or enjoyment of the property or as of the
21 time of death-of the decedent decedent's death, whichever
22 first occurs.

23 (3) If the recipient of the property fails to survive
24 the decedent, the property is not taken into account in
25 computing the division and distribution of the decedent's

1 intestate share-to-be--received--by--the--recipient's--issue
2 estate, unless the declaration-or-acknowledgment decedent's
3 contemporaneous writing provides otherwise."

4 **Section 16.** Section 72-2-207, MCA, is amended to read:

5 "72-2-207. No taker ---escheat-to-state. If there is no
6 taker under the provisions of 72-2-202--and--72-2-203 this
7 chapter, the intestate estate passes to the state of
8 Montana."

9 **Section 17.** Section 72-2-210, MCA, is amended to read:

10 "72-2-210. Persons Individuals related to decedent
11 through two lines. A-person An individual who is related to
12 the decedent through two lines of relationship is entitled
13 to only a single share based on the relationship that would
14 entitle him the individual to the larger share."

15 **Section 18.** Section 72-2-212, MCA, is amended to read:

16 "72-2-212. Afterborn heirs. Relatives-of-the-decedent
17 conceived-before-his-death-but-born-thereafter-inherit-as-if
18 they-had-been-born-in--the--lifetime--of--the--decedent. An
19 individual in gestation at a particular time is treated as
20 living at that time if the individual lives 120 hours or
21 more after birth."

22 **Section 19.** Section 72-2-213, MCA, is amended to read:

23 "72-2-213. Establishment--of--parent-child Parent and
24 child relationship. (1) If Except as provided in subsections
25 (2) and (3), for the purposes of intestate succession, a

1 ~~relationship-of-parent-and--child--must--be--established--to~~
 2 ~~determine--succession~~ by, through, or from a person, an
 3 individual is the child of the child's natural parents,
 4 regardless of their marital status. The parent and child
 5 relationship may be established under Title 40, chapter 6,
 6 part 1.

7 ~~{1}~~(2) An adopted person individual is the child of an
 8 adopting parent or parents and not of the natural parents,
 9 ~~except--that~~ but adoption of a child by the spouse of a
 10 either natural parent has no effect on:

11 (a) the relationship between the child and either
 12 natural parent; or

13 (b) the right of the child or a descendant of the child
 14 to inherit from or through the other natural parent.

15 ~~{2}--in-cases-not-covered-by-subsection-{1}, a person is~~
 16 ~~the-child-of-its-parents-regardless-of-the-marital-status-of~~
 17 ~~its-parents, and the parent-and-child--relationship--may--be~~
 18 ~~established--under--the--Uniform--Parentage--Act,--Title 40,~~
 19 ~~chapter 6, part 1.~~

20 (3) Inheritance from or through a child by either
 21 natural parent or the parent's kindred is precluded unless
 22 that natural parent has openly treated the child as the
 23 parent's and has not refused to support the child."

24 **Section 20.** Section 72-2-214, MCA, is amended to read:

25 "72-2-214. Alienage. No person individual is

1 disqualified to take as an heir because he the individual or
 2 a-person an individual through whom he the individual claims
 3 is or has been an alien ~~unless--the--country--in--which--he~~
 4 ~~resides--does--not--allow--reciprocity."~~

5 **NEW SECTION. Section 21.** Debts to decedent. A debt
 6 owed to a decedent is not charged against the intestate
 7 share of any individual except the debtor. If the debtor
 8 fails to survive the decedent, the debt is not taken into
 9 account in computing the intestate share of the debtor's
 10 descendants.

11 **Section 22.** Section 72-2-301, MCA, is amended to read:

12 "72-2-301. Who may make a will. Any--person An
 13 individual 18 or more years of age who is of sound mind may
 14 make a will."

15 **Section 23.** Section 72-2-302, MCA, is amended to read:

16 "72-2-302. Execution -- witnessed wills -- holographic
 17 wills. (1) Except as provided for--holographic---wills,
 18 writings--within--72-2-312,--and--wills--within in 72-2-303,
 19 72-2-306, 72-2-312, and subsection (2) of this section,
 20 every a will shall must be:

21 (a) in writing;

22 (b) signed by the testator or in the testator's name by
 23 some other person individual in the testator's conscious
 24 presence and by his the testator's direction; and

25 (c) shall--be signed by at least two persons

1 individuals, each of whom signed within a reasonable time
 2 after having witnessed either the signing of the will as
 3 described in subsection (1)(b) or the testator's
 4 acknowledgment of the ~~that~~ signature or acknowledgment of
 5 the will.

6 (2) A will that does not comply with subsection (1) is
 7 valid as a holographic will, whether or not witnessed, if
 8 the signature and material portions of the document are in
 9 the testator's handwriting.

10 (3) Intent that the document constitute the testator's
 11 will may be established by extrinsic evidence, including,
 12 for holographic wills, portions of the document that are not
 13 in the testator's handwriting."

14 **Section 24.** Section 72-2-304, MCA, is amended to read:

15 **"72-2-304. Self-proved will.** (1) **Any A** will may be
 16 simultaneously executed, attested, and made self-proved by
 17 acknowledgment thereof by the testator and affidavits of the
 18 witnesses, each made before an officer authorized to
 19 administer oaths under the laws of the state where in which
 20 execution occurs and evidenced by the officer's certificate,
 21 under official seal, in substantially the following form:

22 I,, the testator, sign my name to this
 23 instrument this day of, 19...., and being
 24 first duly sworn, do hereby declare to the undersigned
 25 authority that I sign and execute this instrument as my ~~last~~

1 will and that I sign it willingly (or willingly direct
 2 another to sign for me), that I execute it as my free and
 3 voluntary act for the purposes therein expressed, and that I
 4 am 18 years of age or older, of sound mind, and under no
 5 constraint or undue influence.

6
 7 Testator

8 We,,, the witnesses, sign our
 9 names to this instrument, being first duly sworn, and do
 10 hereby declare to the undersigned authority that the
 11 testator signs and executes this instrument as ~~his-last~~ the
 12 testator's will and that ~~he~~ the testator signs it willingly
 13 (or willingly directs another to sign for ~~him~~ the testator),
 14 and that each of us, in the presence and hearing of the
 15 testator, hereby signs this will as witness to the
 16 testator's signing, and that to the best of our knowledge
 17 the testator is 18 years of age or older, of sound mind, and
 18 under no constraint or undue influence.

19
 20 Witness
 21
 22 Witness

23 THE STATE OF
 24 COUNTY OF

25 Subscribed, sworn to, and acknowledged before me by

1 , the testator, and subscribed and sworn to before
2 me by and , witnesses, this day
3 of

4 (SEAL) (Signed).....
5 (Official capacity of officer)
6

7 (2) An attested will may be made self-proved at any
8 time ~~subsequent-to~~ after its execution ~~be--made--self-proved~~
9 by the acknowledgment thereof by the testator and the
10 affidavits of the witnesses, each made before an officer
11 authorized to administer oaths under the laws of the state
12 where in which the acknowledgment occurs and evidenced by
13 the officer's certificate, under the official seal, attached
14 or annexed to the will in substantially the following form:
15 THE STATE OF
16 COUNTY OF

17 We, , , and , the testator
18 and the witnesses, respectively, whose names are signed to
19 the attached or foregoing instrument, being first duly
20 sworn, do hereby declare to the undersigned authority that
21 the testator signed and executed the instrument as ~~his--last~~
22 the testator's will and that ~~he-had~~ the testator signed
23 willingly (or willingly directed another to sign for him the
24 testator), and that he the testator executed it as his the
25 testator's free and voluntary act for the purposes therein

1 expressed, and that each of the witnesses, in the presence
2 and hearing of the testator, signed the will as witness and
3 that to the best of his the witness's knowledge the testator
4 was at that time ~~18 or more~~ years of age or older, of sound
5 mind, and under no constraint or undue influence.

6 Testator
7 Witness
8 Witness

9 Subscribed, sworn to, and acknowledged before me by
10 , the testator, and subscribed and sworn to before
11 me by and , witnesses, this day
12 of ,

13 (SEAL) (Signed).....
14 (Official capacity of officer)
15

16 (3) A signature affixed to a self-proving affidavit
17 attached to a will is considered a signature affixed to the
18 will if necessary to prove the will's due execution."

19 **Section 25.** Section 72-2-305, MCA, is amended to read:

20 "72-2-305. Who may witness. (1) Any--person An
21 individual generally competent to be a witness may act as a
22 witness to a will.

23 (2) A The signing of a will is-not-invalid-because-the
24 will-is-signed by an interested witness does not invalidate
25 the will or any provision of it."

Section 26. Section 72-2-306, MCA, is amended to read:

"72-2-306. Choice of law as to execution. A written will is valid if executed in compliance with 72-2-302 or ~~72-2-303~~ [section 34] or if its execution complies with the law at the time of execution of the place where the will is executed or of the law of the place where at the time of execution or at the time of death the testator is domiciled, has a place of abode, or is a national."

Section 27. Section 72-2-311, MCA, is amended to read:

"72-2-311. Incorporation by reference. Any A writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification."

Section 28. Section 72-2-312, MCA, is amended to read:

"72-2-312. Separate writing identifying disposition of tangible personal property. (1) Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, ~~---evidences---of indebtedness,---documents---of---title,---and---securities---and property-used-in-trade-or-business.~~

(2) To be admissible under this section as evidence of the intended disposition, the writing must ~~either be in the~~

~~handwriting-of-the-testator-or-be~~ signed by him the testator and must describe the items and the devisees with reasonable certainty.

(3) The writing may be:

(a) referred to as one to be in existence at the time of the testator's death;

(b) prepared before or after the execution of the will;

(c) altered by the testator after its preparation; and

(d) a writing which that has no significance apart from its effect upon the dispositions made by the will."

Section 29. Section 72-2-313, MCA, is amended to read:

"72-2-313. Events of independent significance. A will may dispose of property by reference to acts and events which that have significance apart from their effect upon the dispositions made by the will, whether they occur before or after the execution of the will or before or after the testator's death. The execution or revocation of a will of another person is such an event."

Section 30. Section 72-2-314, MCA, is amended to read:

"72-2-314. Testamentary additions to trusts. (1) (a) ~~A will may validly devise or bequest, the validity of which is determinable by the law of this state, may be made by a will~~ property to the trustee of a trust established or to be established;

(i) during the testator's lifetime by the testator, or

1 by the testator and some other person, or by some other
 2 person, (including a funded or unfunded life insurance
 3 trust, although the ~~trustor~~ settlor has reserved any or all
 4 rights of ownership of the insurance contracts); or

5 (ii) at the testator's death by the testator's devise to
 6 the trustee if the trust is identified in the testator's
 7 will and its terms are set forth in a written instrument,
 8 (other than a will), executed before, or concurrently with,
 9 or after the execution of the testator's will or in the
 10 ~~valid last~~ another individual's will of a person who if that
 11 other individual has predeceased the testator, (regardless
 12 of the existence, size, or character of the corpus of the
 13 trust).

14 (b) The devise is not invalid because the trust is
 15 amendable or revocable or because the trust was amended
 16 after the execution of the will or after the testator's
 17 ~~death of the testator~~.

18 (2) Unless the testator's will provides otherwise, the
 19 property so devised to a trust described in subsection (1)
 20 is not ~~deemed to be~~ held under a testamentary trust of the
 21 testator but it becomes a part of the trust to which it is
 22 given devised and ~~shall must~~ be administered and disposed of
 23 in accordance with the provisions of the governing
 24 instrument ~~or will~~ setting forth the terms of the trust,
 25 including any amendments thereto made before or after the

1 ~~testator's death of the testator (regardless of whether made~~
 2 ~~before or after the execution of the testator's will) and if~~
 3 ~~the testator's will so provides, including any amendments to~~
 4 ~~the trust made after the death of the testator.~~

5 (3) A Unless the testator's will provides otherwise, a
 6 revocation or termination of the trust before the testator's
 7 ~~death of the testator~~ causes the devise to lapse."

8 **Section 31.** Section 72-2-321, MCA, is amended to read:

9 "72-2-321. Revocation by writing or act. (1) A will or
 10 any part ~~thereof~~ of a will is revoked:

11 ~~(1)(a)~~ (a) by executing a subsequent will which that
 12 revokes the prior previous will or part expressly or by
 13 inconsistency; or

14 ~~(2)(b)~~ (b) by being burned, torn, canceled, obliterated, or
 15 destroyed performing a revocatory act on the will if the
 16 testator performed the act with the intent and for the
 17 purpose of revoking ~~it by the testator~~ the will or part of
 18 the will or by if another person individual performed the
 19 act in his the testator's conscious presence and by his the
 20 testator's direction. For purposes of this subsection (b),
 21 "revocatory act on the will" includes burning, tearing,
 22 canceled, obliterating, or destroying the will or any part
 23 of it. A burning, tearing, or canceling is a revocatory act
 24 on the will, whether or not the burn, tear, or cancellation
 25 touched any of the words on the will.

(2) If a subsequent will does not expressly revoke a previous will, the execution of the subsequent will wholly revokes the previous will by inconsistency if the testator intended the subsequent will to replace rather than supplement the previous will.

(3) The testator is presumed to have intended a subsequent will to replace rather than supplement a previous will if the subsequent will makes a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the previous will is revoked and only the subsequent will is operative on the testator's death.

(4) The testator is presumed to have intended a subsequent will to supplement rather than replace a previous will if the subsequent will does not make a complete disposition of the testator's estate. If this presumption arises and is not rebutted by clear and convincing evidence, the subsequent will revokes the previous will only to the extent the subsequent will is inconsistent with the previous will and each will is fully operative on the testator's death to the extent they are not inconsistent."

Section 32. Section 72-2-322, MCA, is amended to read:

"72-2-322. Revocation by divorce--or--annulment-----no revocation-by-other change in of circumstances. {1}-if-after

annulled, the divorce or annulment revokes--any--disposition or--appointment--of--property--made--by--the--will--to--the--former spouse, any provision conferring a general or special power of appointment--on--the--former--spouse, and any nomination of the former spouse--as--executor, trustee, conservator, or guardian, unless the will expressly provides otherwise.

{2}--Property--prevented--from--passing--to--a--former--spouse because of revocation by divorce or annulment passes--as--if the--former--spouse--failed--to--survive--the--decendent, and other provisions conferring some power or office--on--the--former spouse--are--interpreted--as--if--the--spouse--failed--to--survive the decendent.

{3}--If provisions are revoked solely by--this--section, they--are--revived--by--testator's--remarriage--to--the--former spouse.

{4}--For purposes of this section, divorce or annulment means--any--divorce--or--annulment--which--would--exclude--the spouse--as--a--surviving--spouse--within--the--meaning--of 72-2-103(2). A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.

{5}--No Except as provided in 72-2-104 and [section 71], a change of circumstances other than as described in this section revokes does not revoke a will or any part of it.

Section 33. Section 72-2-323, MCA, is amended to read:

1 "72-2-323. Revival of revoked will. (1) If a second
 2 subsequent will which had it remained effective at death
 3 would have that wholly revoked the first a previous will in
 4 whole or in part is thereafter revoked by acts a revocatory
 5 act under 72-2-321(1)(b), the first previous will is remains
 6 revoked in whole or in part unless it is revived. The
 7 previous will is revived if it is evident from the
 8 circumstances of the revocation of the second subsequent
 9 will or from the testator's contemporary or subsequent
 10 declarations that he the testator intended the first
 11 previous will to take effect as executed.

12 (2) If a subsequent will that partly revoked a previous
 13 will is thereafter revoked by a revocatory act under
 14 72-2-321(1)(b), a revoked part of the previous will is
 15 revived unless it is evident from the circumstances of the
 16 revocation of the subsequent will or from the testator's
 17 contemporary or subsequent declarations that the testator
 18 did not intend the revoked part to take effect as executed.

19 (2)(3) If a second subsequent will which had it
 20 remained effective at death would have that revoked the
 21 first a previous will in whole or in part is thereafter
 22 revoked by a third another, later will, the first previous
 23 will is remains revoked in whole or in part, except unless
 24 it or its revoked part is revived. The previous will or its
 25 revoked part is revived to the extent it appears from the

1 terms of the third later will that the testator intended the
 2 first previous will to take effect."

3 NEW SECTION. Section 34. Writings intended as wills.
 4 Although a document or writing added upon a document was not
 5 executed in compliance with 72-2-302, the document or
 6 writing is treated as if it had been executed in compliance
 7 with that section if the proponent of the document or
 8 writing establishes by clear and convincing evidence that
 9 the decedent intended the document or writing to constitute:
 10 (1) the decedent's will;
 11 (2) a partial or complete revocation of the will;
 12 (3) an addition to or an alteration of the will; or
 13 (4) a partial or complete revival of the decedent's
 14 formerly revoked will or of a formerly revoked portion of
 15 the will.

16 **Section 35.** Section 72-2-401, MCA, is amended to read:

17 "72-2-401. Duty of custodian to deliver of will --
 18 liability. (1) After the death of a testator and on request
 19 of an interested person, any a person having custody of a
 20 will of the testator shall deliver it with reasonable
 21 promptness to a person able to secure its probate and, if
 22 none is known, to an appropriate court.

23 (2) --Any A person who willfully fails to deliver a will
 24 is liable to any person aggrieved for the any damages which
 25 that may be sustained by the failure. Any A person who

1 willfully refuses or fails to deliver a will after being
2 ordered by the court in a proceeding brought for the purpose
3 of compelling delivery is subject to penalty for contempt of
4 court."

5 **Section 36.** Section 72-2-402, MCA, is amended to read:

6 "72-2-402. Deposit of will with court --
7 ~~confidentiality---examination-by-conservator---delivery in~~
8 ~~testator's lifetime.~~ {1} A will may be deposited by the
9 testator or his the testator's agent with any court for
10 safekeeping, under rules of the court. The will ~~shall~~ must
11 be sealed and kept confidential.

12 {2} During the testator's lifetime, a deposited will
13 ~~shall~~ may be delivered only to him the testator or to a
14 person authorized in writing signed by him the testator to
15 receive the will.

16 {3} A conservator may be allowed to examine a deposited
17 will of a protected testator under procedures designed to
18 maintain the confidential character of the document to the
19 extent possible and to ~~assure~~ ensure that it will be
20 resealed and ~~left kept~~ on deposit after the examination.

21 {4} Upon being informed of the testator's death, the
22 court shall notify any person designated to receive the will
23 and deliver it to him that person on request, or the court
24 may deliver the will to the appropriate court."

25 **Section 37.** Section 72-2-502, MCA, is amended to read:

1 "72-2-502. Will construed--to may pass all property --
2 and after-acquired property. A will ~~is-construed-to-pass may~~
3 provide for the passage of all property which the testator
4 owns at his death, ~~including and all~~ property acquired by
5 the estate after the ~~execution--of--the--will~~ testator's
6 death."

7 **Section 38.** Section 72-2-504, MCA, is amended to read:

8 "72-2-504. Choice of law as to meaning and effect of
9 wills governing instrument. The meaning and legal effect of
10 a disposition--in--a--will--shall-be governing instrument is
11 determined by the local law of ~~a--particular~~ the state
12 selected by the testator transferor in his the governing
13 instrument unless the application of that law is contrary to
14 the provisions relating to the elective share described in
15 part 7, the provisions relating to exempt property and
16 allowances described in part 8, or any other public policy
17 of this state otherwise applicable to the disposition."

18 **Section 39.** Section 72-2-512, MCA, is amended to read:

19 "72-2-512. Antilapse -- deceased devisee -- class
20 gifts. {1} As used in this section, the following
21 definitions apply:

22 (a) "Alternative devise" means a devise that is
23 expressly created by the will and that under the terms of
24 the will may take effect instead of another devise on the
25 happening of one or more events, including survival of the

testator or failure to survive the testator, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause constitutes an alternative devise with respect to a nonresiduary devise only if the will specifically provides that, upon lapse or failure, the nonresiduary devise or nonresiduary devises in general pass under the residuary clause.

(b) "Class member" includes an individual who fails to survive the testator but who would have taken under a devise in the form of a class gift had the individual survived the testator.

(c) "Devise" includes an alternative devise, a devise in the form of a class gift, and an exercise of a power of appointment.

(d) "Devisee" includes:

(i) a class member if the devise is in the form of a class gift;

(ii) an individual or class member who was deceased at the time the testator executed the testator's will as well as an individual or class member who was then living but who failed to survive the testator; and

(iii) an appointee under a power of appointment exercised by the testator's will.

(e) "Stepchild" means a child of the surviving,

deceased, or former spouse of the testator or of the donor of a power of appointment but not a child of the testator or donor.

(f) "Surviving devisee" or "surviving descendant" means a devisee or a descendant who neither predeceased the testator nor is considered to have predeceased the testator under [section 62].

(g) "Testator" includes the donee of a power of appointment if the power is exercised in the testator's will.

(1) If a devisee who fails to survive the testator and is a grandparent, or a lineal descendant of a grandparent, or a stepchild of either the testator or the donor of a power of appointment exercised by the testator's will, the following apply: of-the-testator-is--dead--at--the time--of--execution--of--the--will;--fails--to--survive--the testator;--or--is--treated--as--if--he--predeceased--the--testator; the--issue--of--the--deceased--devisee--who--survive--the--testator by--120--hours--take--in--place--of--the--deceased--devisee--and--if they--are--all--of--the--same--degree--of--kinship--to--the--devisee; they--take--equally;--but--if--of--unequal--degree--then--those--of more--remote--degree--take--by--representation;

(2) One who would have been a devisee under a class gift if he had survived the testator is treated as a devisee for purposes of this section whether his death occurred

~~before-or-after-the-execution-of-the-will:~~

(a) Except as provided in subsection (2)(d), if the devise is not in the form of a class gift and the deceased devisee leaves surviving descendants, a substitute gift is created in the devisee's surviving descendants. They take by representation the property to which the devisee would have been entitled had the devisee survived the testator.

(b) Except as provided in subsection (2)(d), if the devise is in the form of a class gift, other than a devise to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family" or a class described by language of similar import, a substitute gift is created in the deceased devisee or devisee's surviving descendants. The property to which the devisees would have been entitled had all of them survived the testator passes to the surviving devisees and the surviving descendants of the deceased devisees. Each surviving devisee takes the share to which the devisee would have been entitled had the deceased devisees survived the testator. Each deceased devisee's surviving descendants who are substituted for the deceased devisee take by representation the share to which the deceased devisee would have been entitled had the deceased devisee survived the testator. For purposes of this subsection (b), "deceased devisee" means a class member who failed to survive the testator and left one or more

surviving descendants.

(c) For purposes of {section 47}, words of survivorship, such as in a devise to an individual "if the individual survives me" or in a devise to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If the will creates an alternative devise with respect to a devise for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative devise only if an expressly designated devisee of the alternative devise is entitled to take under the will.

(e) Unless the language creating a power of appointment expressly excludes the substitution of the descendants of an appointee for the appointee, a surviving descendant of a deceased appointee of a power of appointment may be substituted for the appointee under this section, whether or not the descendant is an object of the power.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one devise and the devises are alternative devises, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the

devised property passes under the primary substitute gift.

(b) If there is a younger-generation devise, the devised property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following definitions apply:

(i) "Primary devise" means the devise that would have taken effect had all the deceased devisees of the alternative devises who left surviving descendants survived the testator.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary devise.

(iii) "Younger-generation devise" means a devise that:

(A) is to a descendant of a devisee of the primary devise;

(B) is an alternative devise with respect to the primary devise;

(C) is a devise for which a substitute gift is created; and

(D) would have taken effect had all the deceased devisees who left surviving descendants survived the testator except the deceased devisee or devisees of the primary devise.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the

younger-generation devise."

Section 40. Section 72-2-513, MCA, is amended to read:

"72-2-513. Failure of devise testamentary provision.

(1) Except as provided in 72-2-512, if a devise, other than a residuary devise, that fails for any reason, it becomes a part of the residue.

(2) Except as provided in 72-2-512, if the residue is devised to two or more persons, and the share of one of the residuary devisees fails for any reason, his share passes to the other residuary devisee or to other residuary devisees in proportion to their interests the interest of each in the remaining part of the residue."

Section 41. Section 72-2-514, MCA, is amended to read:

"72-2-514. Nonexoneration ---specific-devise-subject-to security--interest. A specific devise passes subject to any security interest existing at the date of death, without right of exoneration, regardless of a general directive in the will to pay debts."

Section 42. Section 72-2-515, MCA, is amended to read:

"72-2-515. Ademption by satisfaction. (1) Property which that a testator gave in his the testator's lifetime to a person is treated as a satisfaction of a devise to that person, in whole or in part, only if:

(a) the will provides for deduction of the lifetime gift;

(b) or the testator declares declared in a contemporaneous writing that the gift ~~is-to-be-deducted-from the-devise-or~~ is in satisfaction of the devise or the devisee ~~---acknowledges---in---writing---that---the---gift---is---in~~ satisfaction that its value is to be deducted from the value of the devise; or

(c) the devisee acknowledged in writing that the gift is in satisfaction of the devise or that its value is to be deducted from the value of the devise.

(2) For purpose purposes of partial satisfaction, property given during the testator's lifetime is valued as of the time the devisee came into possession or enjoyment of the property or ~~as-of-the-time-of~~ at the testator's death of ~~the-testator~~, whichever occurs first.

(3) If the devisee fails to survive the testator, the gift is treated as a full or partial satisfaction of the devise, as appropriate, in applying 72-2-512 and 72-2-513, unless the testator's contemporaneous writing provides otherwise."

Section 43. Section 72-2-516, MCA, is amended to read:

"72-2-516. Nonademption of specific devises ~~in--certain cases -- unpaid proceeds of sale, condemnation, or insurance -- sale by conservator or agent.~~ (1) A specific devisee has the right to the specifically devised property in the testator's estate at death and:

(a) any balance of the purchase price, ~~together with any security interest~~, owing from a purchaser to the testator at death by reason of sale of the property;

(b) any amount of a condemnation award for the taking of the property unpaid at death;

(c) any proceeds unpaid at death on fire or casualty insurance on or other recovery for injury to the property; and

(d) property owned by the testator at his death, and acquired as a result of foreclosure or obtained in lieu of foreclosure of the security interest for a specifically devised obligation;

(e) real or tangible personal property owned by the testator at death that the testator acquired as a replacement for specifically devised real or tangible personal property; and

(f) unless the facts and circumstances indicate that ademption of the devise was intended by the testator or ademption of the devise is consistent with the testator's manifested plan of distribution, the value of the specifically devised property to the extent the specifically devised property is not in the testator's estate at death and its value or its replacement is not covered by subsections (1)(a) through (1)(e).

(2) If specifically devised property is sold or

1 mortgaged by a conservator or an agent acting within the
 2 authority of a durable power of attorney for a an
 3 incapacitated principal ~~who--is-under-a-disability~~ or if a
 4 condemnation award, or insurance proceeds, or recovery for
 5 an injury to property ~~are~~ is paid to a conservator or an
 6 agent acting within the authority of a durable power of
 7 attorney for a an incapacitated principal, ~~who-is-under-a~~
 8 ~~disability, as a result of condemnation, fire, or casualty,~~
 9 the specific devisee has the right to a general pecuniary
 10 devise equal to the net sale price, the amount of the unpaid
 11 loan, the condemnation award, or the insurance proceeds, or
 12 the recovery. ~~This--subsection--does--not--apply--if--after--the~~
 13 ~~sale, condemnation, or casualty--it--is--adjudicated--that--the~~
 14 ~~disability--of--the--testator--has--ceased--and--the--testator~~
 15 ~~survives--the--adjudication--by--1--year.~~

16 (3) The right of the specific devisee under this
 17 subsection (2) is reduced by any right he the devisee has
 18 under subsection (1).

19 (4) For the purposes of the references in subsection
 20 (2) to a conservator, subsection (2) does not apply if,
 21 after the sale, mortgage, condemnation, casualty, or
 22 recovery, it was adjudicated that the testator's incapacity
 23 ceased and the testator survived the adjudication by 1 year.

24 (5) For the purposes of the references in subsection
 25 (2) to an agent acting within the authority of a durable

1 power of attorney for an incapacitated principal;

2 (a) "incapacitated principal" means a principal who is
 3 an incapacitated person;

4 (b) no adjudication of incapacity before death is
 5 necessary; and

6 (c) the acts of an agent within the authority of a
 7 durable power of attorney are presumed to be for an
 8 incapacitated principal."

9 **Section 44.** Section 72-2-517, MCA, is amended to read:

10 "72-2-517. Changes Increase in devised securities --
 11 distributions--prior--to--death accessions. (1) If the a
 12 testator intended--a--specific-devise-of-certain executes a
 13 will that devises securities rather--than--the--equivalent
 14 value--thereof,--the-specific-devisee-is-entitled-only-to and
 15 the testator then owned securities that meet the description
 16 in the will, the devise includes additional securities owned
 17 by the testator at death to the extent the additional
 18 securities were acquired by the testator after the will was
 19 executed as a result of the testator's ownership of the
 20 described securities and if the securities are of any of the
 21 following types:

22 (a) as--much--of-the-devised securities as-is-a-part-of
 23 the-estate-at-time-of-the-testator's-death;

24 (b) any-additional-or--other--securities of the same
 25 entity-owned-by-the-testator organization acquired by reason

of action initiated by the entity organization or any successor, related, or acquiring organization, excluding any securities acquired by exercise of purchase options;

~~(c)(b)~~ securities of another ~~entity--owned--by--the~~ testator organization acquired as a result of a merger, consolidation, reorganization, or other ~~similar---action~~ initiated distribution by the entity organization or any successor, related, or acquiring organization; and or

~~(d)(c)~~ any-additional securities of the entity-owned-by-the-testator same organization acquired as a result of a plan of reinvestment.

(2) Distributions ~~prior--to~~ in cash before death with respect to a ~~specifically--devised~~ described security ~~not provided--for-in-subsection-(i)~~ are not part of the specific devise."

Section 45. Section 72-2-518, MCA, is amended to read:

"72-2-518. ~~No-implied-exercise~~ Exercise of power of appointment. A In the absence of a requirement that a power of appointment be exercised by a reference to the power or by an express or specific reference to the power, a general residuary clause in a will or a will making general disposition of all of the testator's property does--not expresses an intention to exercise a power of appointment held by the testator unless only if:

(1) specific-reference-is-made-to the power or ~~there-is~~

~~some-other-indication-of~~ is a general power and the creating instrument does not contain a gift if the power is not exercised; or

(2) the testator's will manifests an intention to include the property subject to the power."

Section 46. Section 72-2-519, MCA, is amended to read:

"72-2-519. ~~Penalty clause for contest unenforceable.~~ A provision in a will purporting to penalize any an interested person for contesting the will or instituting other proceedings relating to the estate is unenforceable if probable cause exists for instituting proceedings."

NEW SECTION. **Section 47.** Scope. In the absence of a finding of a contrary intention, the rules of construction in this part control the construction of a will.

Section 48. Section 72-2-601, MCA, is amended to read:

"72-2-601. ~~Omitted Entitlement of spouse -- premarital will.~~ (1) If a ~~testator-fails-to-provide-by-will-for-his~~ testator's surviving spouse who married the testator after the execution of the will, the ~~omitted surviving spouse shall is~~ entitled to receive, as an intestate share, no less than the value of the same share of the estate he the spouse would have received if the decedent-left--no--will testator had died intestate as to that portion of the testator's estate, if any, that is neither devised to a child of the testator who was born before the testator married the

surviving spouse and who is not a child of the surviving spouse nor devised or passes under 72-2-512 or 72-2-513 to a descendant of such a child, unless:

(a) it appears from the will that the omission was intentional or other evidence that the will was made in contemplation of the testator's marriage to the surviving spouse;

(b) the will expresses the intention that it is to be effective notwithstanding any subsequent marriage; or

(c) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by the testator's statements of--the--testator or is reasonably inferred from the amount of the transfer or other evidence.

(2) In satisfying a the share provided by this section, the devises made by the will to the testator's surviving spouse, if any, are applied first and other devises, other than a devise to a child of the testator who was born before the testator married the surviving spouse and who is not a child of the surviving spouse or a devise or substitute gift under 72-2-512 or 72-2-513 to a descendant of such a child, abate as provided in 72-3-901."

Section 49. Section 72-2-602, MCA, is amended to read:

"72-2-602. Pretermitted-child Omitted children. (1) If Except as provided in subsection (2), if a testator fails to

provide in his the testator's will for any of his the testator's children born or adopted after the execution of his the will, the omitted after-born or after-adopted child receives a share in the estate as follows:

(a) If the testator had no child living when the testator executed the will, an omitted after-born or after-adopted child receives a share in the estate equal in value to that which he the child would have received if had the testator had died intestate unless, the will devised all or substantially all of the estate to the other parent of the omitted child and that other parent survives the testator and is entitled to take under the will.

(b) If the testator had one or more children living when the testator executed the will and the will devised property or an interest in property to one or more of the then-living children, an omitted after-born or after-adopted child is entitled to share in the testator's estate as follows:

(i) The portion of the testator's estate in which the omitted after-born or after-adopted child is entitled to share is limited to devises made to the testator's then-living children under the will.

(ii) The omitted after-born or after-adopted child is entitled to receive the share of the testator's estate, as limited in subsection (1)(b)(i), that the child would have

received had the testator included all omitted after-born and after-adopted children with the children to whom devises were made under the will and had given an equal share of the estate to each child.

(iii) To the extent feasible, the interest granted an omitted after-born or after-adopted child under this section must be of the same character, whether equitable or legal, present or future, as that devised to the testator's then-living children under the will.

(iv) In satisfying a share provided by this subsection (1)(b), devises to the testator's children who were living when the will was executed abate ratably. In abating the devises of the then-living children, the court shall preserve to the maximum extent possible the character of the testamentary plan adopted by the testator.

(2) Subsections (1)(a), (1)(b), and (3) do not apply if:

(a) it appears from the will that the omission was intentional;

(b) when the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child; or

(c) (b) the testator provided for the omitted after-born or after-adopted child by transfer outside the will and the intent that the transfer be in lieu of a testamentary

provision is shown by the testator's statements of the testator or is reasonably inferred from the amount of the transfer or other evidence.

(2)(3) If Except as provided in subsection (2), if at the time of execution of the will the testator fails to provide in his the testator's will for a living child solely because he the testator believes the child to be dead, the child receives a is entitled to share in the estate equal in value to that which he would have received if the testator had died intestate as if the child were an omitted after-born or after-adopted child.

(3)(4) In satisfying a share provided by this section subsection (1)(a), the devises made by the will abate as provided in 72-3-901."

Section 50. Section 72-2-702, MCA, is amended to read:

"72-2-702. Right to elective share. (1) If a married person domiciled in this state dies, the surviving spouse of a decedent who dies domiciled in this state has a right of election, under the limitations and conditions stated in this part, to take an elective share of one-third elective share amount equal to the value of the elective share percentage of the augmented estate under the limitations and conditions hereinafter stated, determined by the length of time the spouse and the decedent were married to each other, in accordance with the following

1 schedule:
 2 If the decedent and the The elective-share
 3 spouse were married to percentage is:
 4 each other:
 5 Less than 1 year supplemental amount only
 6 1 year but less than 2 years 3% of the augmented estate
 7 2 years but less than 3 years 6% of the augmented estate
 8 3 years but less than 4 years 9% of the augmented estate
 9 4 years but less than 5 years 12% of the augmented estate
 10 5 years but less than 6 years 15% of the augmented estate
 11 6 years but less than 7 years 18% of the augmented estate
 12 7 years but less than 8 years 21% of the augmented estate
 13 8 years but less than 9 years 24% of the augmented estate
 14 9 years but less than 10 years 27% of the augmented estate
 15 10 years but less than 11 years 30% of the augmented estate
 16 11 years but less than 12 years 34% of the augmented estate
 17 12 years but less than 13 years 38% of the augmented estate
 18 13 years but less than 14 years 42% of the augmented estate
 19 14 years but less than 15 years 46% of the augmented estate
 20 15 years or more 50% of the augmented estate
 21 (2) If the sum of the amounts described in
 22 72-2-705(2)(c) and (2)(d) and 72-2-706(1)(a) and (1)(c) and
 23 that part of the elective-share amount payable from the
 24 decedent's probate and reclaimable estates under 72-2-706(2)
 25 and (3) is less than \$50,000, the surviving spouse is

1 entitled to a supplemental elective-share amount equal to
 2 \$50,000, minus the sum of the amounts described in those
 3 sections. The supplemental elective-share amount is payable
 4 from the decedent's probate estate and from recipients of
 5 the decedent's reclaimable estate in the order of priority
 6 set forth in 72-2-706(2) and (3).

7 ~~{2}{3}~~ ~~if-a-married-person-not-domiciled-in-this--state~~
 8 ~~dies--the~~ The right, if any, of the surviving spouse of a
 9 decedent who dies domiciled outside this state to take an
 10 elective share in property in this state is governed by the
 11 law of the decedent's domicile at death."

12 **Section 51.** Section 72-2-703, MCA, is amended to read:

13 "72-2-703. Right of election personal to surviving
 14 spouse. {1} The right of election of--the--surviving--spouse
 15 may be exercised only by him a surviving spouse who is
 16 living when the petition for the elective share is filed in
 17 the court under 72-2-707(1). If the election is not
 18 exercised by the surviving spouse personally, it may be
 19 exercised on the surviving spouse's behalf by the surviving
 20 spouse's conservator, guardian, or agent under the authority
 21 of a power of attorney.

22 ~~{2}~~ ~~in-the-case-of--a--protected~~ If the election is
 23 exercised on behalf of a surviving spouse who is an
 24 incapacitated person, ~~the-right-of-election-may-be-exercised~~
 25 ~~only--by--order-of~~ the court in-which-protective-proceedings

as-to-his-property-are-pending-after-finding--that--exercise
 is--necessary--to--provide--adequate shall set aside that
 portion of the elective-share and supplemental
 elective-share amounts due from the decedent's probate
 estate and recipients of the decedent's reclaimable estate
 under 72-2-706(2) and (3) and shall appoint a trustee to
 administer that property for the support for-the-protected
 person-during-his-probable-life-expectancy of the surviving
 spouse. For the purposes of this subsection, an election on
 behalf of a surviving spouse by an agent under a durable
 power of attorney is presumed to be on behalf of a surviving
 spouse who is an incapacitated person. The trustee shall
 administer the trust in accordance with the following terms
 and such additional terms as the court determines
 appropriate:

(a) Expenditures of income and principal may be made in
 the manner, when, and to the extent that the trustee
 determines suitable and proper for the surviving spouse's
 support, without court order but with regard to other
 support, income, and property of the surviving spouse
 exclusive of benefits of medical or other forms of
 assistance from any state or federal government or
 governmental agency for which the surviving spouse qualifies
 on the basis of need.

(b) During the surviving spouse's incapacity, neither

the surviving spouse nor anyone acting on behalf of the
 surviving spouse has a power to terminate the trust; but if
 the surviving spouse regains capacity, the surviving spouse
 then acquires the power to terminate the trust and acquire
 full ownership of the trust property free of trust by
 delivering to the trustee a writing signed by the surviving
 spouse declaring the termination.

(c) Upon the surviving spouse's death, the trustee
 shall transfer the unexpended trust property in the
 following order:

(i) under the residuary clause, if any, of the will of
 the predeceased spouse against whom the elective share was
 taken, as if that predeceased spouse died immediately after
 the surviving spouse; or

(ii) to that predeceased spouse's heirs under [section
 70]."

Section 52. Section 72-2-704, MCA, is amended to read:

"72-2-704. ~~Surviving-spouse----allowance-----exemptions~~
~~Effect of election on statutory benefits. A~~ If the right of
 election is exercised by or on behalf of the surviving
 spouse, ~~is--entitled--to~~ the surviving spouse's homestead
 allowance, exempt property, and family allowance, if any,
 are not charged against but are in addition to the ~~whether~~
~~or-not-he-elects-to-take-an--elective--share~~ elective-share
 and supplemental elective-share amounts."

Section 53. Section 72-2-705, MCA, is amended to read:

***72-2-705. Augmented estate.** (1) (a) As used in this section, the following definitions apply:

(i) "Bona fide purchaser" means a purchaser for value in good faith and without notice of an adverse claim.

(ii) "Nonadverse party" means a person who does not have a substantial beneficial interest in the trust or other property arrangement that would be adversely affected by the exercise or nonexercise of the power that person possesses respecting the trust or other property arrangement. A person having a general power of appointment over property is considered to have a beneficial interest in the property.

(iii) "Presently exercisable general power of appointment" means a power of appointment under which, at the time in question, the decedent by an exercise of the power could have created an interest, present or future, in the decedent or the decedent's creditors.

(iv) "Probate estate" means property, whether real or personal, movable or immovable, wherever situated, that would pass by intestate succession if the decedent died without a valid will.

(v) "Right to income" includes a right to payments under an annuity or similar contractual arrangement.

(vi) "Value of property owned by the surviving spouse at the decedent's death" and "value of property to which the

surviving spouse succeeds by reason of the decedent's death" include the commuted value of any present or future interest then held by the surviving spouse and the commuted value of amounts payable to the surviving spouse after the decedent's death under any trust, life insurance settlement option, annuity contract, public or private pension, disability compensation, death benefit or retirement plan, or any similar arrangement, exclusive of the federal social security system.

(b) As used in subsections (2)(b)(iii) and (2)(b)(iv), "transfer" includes an exercise or release of a power of appointment but does not include a lapse of a power of appointment.

(2) The augmented estate means-the consists of the sum of:

(a) the value of the decedent's probate estate, reduced by funeral and administration expenses, homestead allowance, family allowances and exemptions, and enforceable claims,-to which-is-added-the-sum-of-the-following-amounts-;

(b) the value of the decedent's reclaimable estate, which is composed of all property, whether real or personal, movable or immovable, wherever situated, not included in the decedent's probate estate, of any of the following types:

(i) property, to the extent the passing of the principal thereof to or for the benefit of any person, other

1 than the decedent's surviving spouse, was subject to a
 2 presently exercisable general power of appointment held by
 3 the decedent alone, if the decedent held that power
 4 immediately before death or if and to the extent the
 5 decedent, while married to the surviving spouse and during
 6 the 2-year period preceding the decedent's death, released
 7 that power or exercised that power in favor of any person
 8 other than the decedent or the decedent's estate, spouse, or
 9 surviving spouse;

10 (ii) property, to the extent of the decedent's
 11 unilaterally severable interest therein, held by the
 12 decedent and any other person, except the decedent's
 13 surviving spouse, with right of survivorship, if the
 14 decedent held that interest immediately before death or if
 15 and to the extent the decedent, while married to the
 16 surviving spouse and during the 2-year period preceding the
 17 decedent's death, transferred that interest to any person
 18 other than the decedent's surviving spouse;

19 (iii) proceeds of insurance, including accidental death
 20 benefits, on the life of the decedent payable to any person
 21 other than the decedent's surviving spouse, if the decedent
 22 owned the insurance policy and had the power to change the
 23 beneficiary of the insurance policy or if the insurance
 24 policy was subject to a presently exercisable general power
 25 of appointment held by the decedent alone immediately before

1 death or if and to the extent the decedent, while married to
 2 the surviving spouse and during the 2-year period preceding
 3 the decedent's death, transferred that policy to any person
 4 other than the decedent's surviving spouse; and

5 {i}{iv} the---value---of property transferred by the
 6 decedent to anyone any person other than a bona fide
 7 purchaser by-the-decedent at any time during the decedent's
 8 marriage to the surviving spouse, to or for the benefit of
 9 any person other than the surviving spouse, to-the-extent
 10 that--the--decedent--did--not--receive--adequate--and---full
 11 consideration-in-money-or-money's-worth-for-the-transfer, if
 12 the transfer is of any of the following types:

13 {a}{A} any transfer under-which to the extent that the
 14 decedent retained at the time of his or during the 2-year
 15 period preceding death the possession or enjoyment of or
 16 right to income from the property;

17 {b}{B} any transfer to the extent that the--decedent
 18 retained at the time of his or during the 2-year period
 19 preceding the decedent's death, the income or principal was
 20 subject to a power, either exercisable by the decedent alone
 21 or in conjunction with any other person,--to-revoke-or-to
 22 consume,--invade,--or-dispose-of-the-principal or exercisable
 23 by a nonadverse party for his--own the benefit of the
 24 decedent or the decedent's estate;

25 {c}{C} any transfer whereby of property to the extent

the decedent's contribution to it, as a percentage of the whole, was made during the 2-year period preceding the decedent's death, by which the property is held at the time of or during the 2-year period preceding the decedent's death by the decedent and another, other than the decedent's surviving spouse, with right of survivorship; or

(d)(D) any transfer made to a donee within 2 years of during the 2-year period preceding the decedent's death of the--decedent to the extent that the aggregate transfers to any one donee in any either of the years exceed \$3,000 \$10,000;

(c) the value of property to which the surviving spouse succeeds by reason of the decedent's death, other than by homestead allowance, exempt property, family allowance, testate succession, or intestate succession, including the proceeds of insurance, including accidental death benefits, on the life of the decedent and including benefits payable under a retirement plan in which the decedent was a participant, exclusive of the federal social security system; and

(d) the value of property owned by the surviving spouse at the decedent's death, reduced by enforceable claims against that property or that spouse, plus the value of amounts that would have been includable in the surviving spouse's reclaimable estate had the spouse predeceased the

decedent. However, amounts that would have been includable in the surviving spouse's reclaimable estate under subsection (2)(b)(iii) are not valued as if the surviving spouse were deceased.

(2)(3) any Any transfer or exercise or release of a power of appointment is excluded from the decedent's reclaimable estate:

(a) to the extent the decedent received adequate and full consideration in money or money's worth for the transfer, exercise, or release; or

(b) if irrevocably made with the written consent or joinder of the surviving spouse.

(4) Property is valued as of the decedent's death, except that but an irrevocable transfer of property given irrevocably--to--a--donee--during--lifetime--of--the--decedent during the 2-year period preceding the decedent's death that is included in the decedent's reclaimable estate under subsections (2)(b)(i), (2)(b)(ii), and (2)(b)(iv) is valued as of the date--the--donee--came--into--possession--or--enjoyment if--that--occurs--first time of the transfer. If the terms of more than one of the provisions of subsection (2)(b) apply, the property is included in the augmented estate under the provision that yields the highest value. For purposes of this subsection, an "irrevocable transfer of property" includes an irrevocable exercise or release of a power of

1 appointment. Nothing herein shall cause to be included in
 2 the augmented estate any life insurance, accident insurance,
 3 joint annuity, or pension payable to a person other than the
 4 surviving spouse;

5 {3}--the value of property owned by the surviving spouse
 6 at the decedent's death, plus the value of property
 7 transferred by the spouse at any time during marriage to any
 8 person other than the decedent which would have been
 9 includable in the spouse's augmented estate if the surviving
 10 spouse had predeceased the decedent, to the extent the owned
 11 or transferred property is derived from the decedent by any
 12 means other than testate or intestate succession without a
 13 full consideration in money or money's worth. For purposes
 14 of this subsection:

15 {a}--property derived from the decedent includes but is
 16 not limited to any beneficial interest of the surviving
 17 spouse in a trust created by the decedent during his
 18 lifetime, any property appointed to the spouse by the
 19 decedent's exercise of a general or special power of
 20 appointment also exercisable in favor of others than the
 21 spouse, any proceeds of insurance (including accidental
 22 death benefits) on the life of the decedent attributable to
 23 premiums paid by him, any lump sum immediately payable and
 24 the commuted value of the proceeds of annuity contracts
 25 under which the decedent was the primary annuitant

1 attributable to premiums paid by him, the commuted value of
 2 amounts payable after the decedent's death under any public
 3 or private pension, disability compensation, death benefit,
 4 or retirement plan, exclusive of the federal social security
 5 system, by reason of service performed or disabilities
 6 incurred by the decedent, any property held at the time of
 7 decedent's death by decedent and the surviving spouse with
 8 right of survivorship, any property held by decedent and
 9 transferred by contract to the surviving spouse by reason of
 10 the decedent's death, and the value of the share of the
 11 surviving spouse resulting from rights in community property
 12 in this or any other state formerly owned with the decedent,
 13 Premiums paid by the decedent's employer, his partner, a
 14 partnership of which he was a member, or his creditors are
 15 deemed to have been paid by the decedent.

16 {b}--property owned by the spouse at the decedent's
 17 death is valued as of the date of death. Property
 18 transferred by the spouse is valued at the time the transfer
 19 became irrevocable or at the decedent's death, whichever
 20 occurred first. Income earned by included property prior to
 21 the decedent's death is not treated as property derived from
 22 the decedent.

23 {c}--property owned by the surviving spouse as of the
 24 decedent's death or previously transferred by the surviving
 25 spouse is presumed to have been derived from the decedent.

1 ~~except to the extent that the surviving spouse establishes~~
 2 ~~that it was derived from another source.~~

3 ~~(4) For the purposes of this section, a bona fide~~
 4 ~~purchaser is a purchaser for value in good faith and without~~
 5 ~~notice of any adverse claim. Any recorded instrument is~~
 6 ~~prima facie evidence that the transfer described therein was~~
 7 ~~made to a bona fide purchaser.~~

8 (5) (a) Although under this section a payment, item of
 9 property, or other benefit is included in the decedent's
 10 reclaimable estate, a payor or other third party is not
 11 liable for having made a payment or transferred an item of
 12 property or other benefit to a beneficiary designated in a
 13 governing instrument, or for having taken any other action
 14 in good faith reliance on the validity of a governing
 15 instrument, upon request and satisfactory proof of the
 16 decedent's death, before the payor or other third party
 17 received written notice from the surviving spouse or
 18 spouse's representative of an intention to file a petition
 19 for the elective share or that a petition for the elective
 20 share has been filed. A payor or other third party is liable
 21 for payments made or other actions taken after the payor or
 22 other third party received written notice of an intention to
 23 file a petition for the elective share or that a petition
 24 for the elective share has been filed.

25 (b) The written notice of intention to file a petition

1 for the elective share or that a petition for the elective
 2 share has been filed must be mailed to the payor's or other
 3 third party's main office or home by certified mail, return
 4 receipt requested, or served upon the payor or other third
 5 party in the same manner as a summons in a civil action.
 6 Upon receipt of written notice of intention to file a
 7 petition for the elective share or that a petition for the
 8 elective share has been filed, a payor or other third party
 9 may pay any amount owed or transfer or deposit any item of
 10 property held by it to or with the court having jurisdiction
 11 of the probate proceedings relating to the decedent's estate
 12 or, if no proceedings have been commenced, to or with the
 13 court having jurisdiction of probate proceedings relating to
 14 decedents' estates located in the county of the decedent's
 15 residence. The court shall hold the funds or item of
 16 property and, upon its determination under 72-2-707(4),
 17 shall order disbursement in accordance with the
 18 determination. If no petition is filed in the court within
 19 the specified time under 72-2-707(1) or, if filed, the
 20 demand for an elective share is withdrawn under 72-2-707(3),
 21 the court shall order disbursement to the designated
 22 beneficiary. Payments, transfers, or deposits made to or
 23 with the court discharge the payor or other third party from
 24 all claims for the value of amounts paid to or items of
 25 property transferred to or deposited with the court.

(c) Upon petition to the probate court by the beneficiary designated in a governing instrument, the court may order that all or part of the property be paid to the beneficiary in an amount and subject to conditions consistent with this section.

(6) (a) A person who purchases property from a recipient for value and without notice or who receives a payment or other item of property in partial or full satisfaction of a legally enforceable obligation is neither obligated under this part to return the payment, item of property, or benefit nor liable under this part for the amount of the payment or the value of the item of property or benefit. However, a person who, not for value, receives a payment, item of property, or other benefit included in the decedent's reclaimable estate is obligated to return the payment, item of property, or benefit or is personally liable for the amount of the payment or the value of the item of property or benefit, as provided in 72-2-706.

(b) If any section or part of any section of this part is preempted by federal law with respect to a payment, an item of property, or any other benefit included in the decedent's reclaimable estate, a person who, not for value, receives the payment, item of property, or other benefit is obligated to return that payment, item of property, or benefit, or is personally liable for the amount of that

payment or the value of that item of property or benefit, as provided in 72-2-706, to the person who would have been entitled to it were that section or part of that section not preempted."

Section 54. Section 72-2-706, MCA, is amended to read:

"72-2-706. Charging spouse with property owned assets and gifts received -- liability of others for balance of elective share. (1) In the proceeding for an elective share, values-included-in-the-augmented-estate-which-pass--or--have passed--to--the-surviving-spouse,--or-which-would-have-passed to-the-spouse-but-were-renounced, the following are applied first to satisfy the elective-share elective-share amount and to reduce or eliminate any contributions due from other the decedent's probate estate and recipients of transfers included-in the augmented decedent's reclaimable estate.-For purposes--of--this---subsection,---the---electing---spouse's beneficial-interest-in-any-life-estate-or-in-any-trust-shall be--computed--as-if-worth-one-half-of-the-total-value-of-the property-subject-to-the-life-estate,--or-of-the-trust-estate, unless-higher--or--lower--values--for--these--interests--are established-by-proof.:

(a) amounts included in the augmented estate that pass or have passed to the surviving spouse by testate or intestate succession;

(b) amounts included in the augmented estate under

1 72-2-705(2)(c);

2 (c) amounts included in the augmented estate that would
3 have passed to the spouse but were disclaimed; and

4 (d) amounts included in the augmented estate under
5 72-2-705(2)(d) up to the applicable percentage thereof. For
6 purposes of this subsection (d), the "applicable percentage"
7 is twice the elective-share percentage set forth in the
8 schedule in 72-2-702(1) appropriate to the length of time
9 the spouse and the decedent were married to each other.

10 (2) If, after the application of subsection (1), the
11 elective-share amount is not fully satisfied or the
12 surviving spouse is entitled to a supplemental
13 elective-share amount, amounts included in the decedent's
14 probate estate and that portion of the decedent's
15 reclaimable estate, other than amounts irrevocably
16 transferred within 2 years before the decedent's death, are
17 applied first to satisfy the unsatisfied balance of the
18 elective-share amount or the supplemental elective-share
19 amount. The decedent's probate estate and that portion of
20 the decedent's reclaimable estate are applied so that
21 liability for the unsatisfied balance of the elective-share
22 amount or for the supplemental elective-share amount is
23 equitably apportioned among the recipients of the decedent's
24 probate estate and that portion of the decedent's
25 reclaimable estate in proportion to the value of their

1 interests therein.

2 (2)(3) Remaining--property--of--the--augmented If, after
3 the application of subsections (1) and (2), the
4 elective-share or supplemental elective-share amount is not
5 fully satisfied, the remaining portion of the decedent's
6 reclaimable estate is so applied so that liability for the
7 unsatisfied balance of the elective-share-of--the--surviving
8 spouse elective-share or supplemental elective-share amount
9 is equitably apportioned among the recipients of the
10 augmented that portion of the decedent's reclaimable estate
11 in proportion to the value of their interests therein.

12 (3)(4) Only original transferees-from-or-appointees--of
13 the-decedent-and-their-donees, recipients of the reclaimable
14 estate described in 72-2-705(2)(b) and the donees of the
15 recipients of the reclaimable estate to the extent the
16 donees have the property or its proceeds, are subject-to-the
17 liable to make a proportional contribution to-make-up-the
18 toward satisfaction of the surviving spouse's elective-share
19 of--the--surviving--spouse elective-share or supplemental
20 elective-share amount. A person liable to contribution may
21 choose to give up the property--transferred--to--him
22 proportional part of the reclaimable estate or to pay its
23 the value as of the time-it-is-considered-in-computing-the
24 augmented-estate amount for which the person is liable."

25 **Section 55.** Section 72-2-707, MCA, is amended to read:

1 *72-2-707. Procedure Proceeding for making-of--election
 2 elective share -- time limit. (1) The-surviving-spouse-may
 3 elect-to-take-his-elective-share--in--the--augmented--estate
 4 Except as provided in subsection (2), the election must be
 5 made by filing in the court and mailing or delivering to the
 6 personal representative, if any, a petition for the elective
 7 share within 9 months after the date of the decedent's death
 8 or within 6 months after the probate of the decedent's will,
 9 whichever limitation last later expires. The surviving
 10 spouse shall give notice of the time and place set for
 11 hearing to persons interested in the estate and to the
 12 distributees and recipients of portions of the augmented
 13 estate whose interests will be adversely affected by the
 14 taking of the elective share. However,--the--nonprobate
 15 transfers Except as provided in subsection (2), the
 16 decedent's reclaimable estate, described in
 17 72-2-705(1)(2)(b), shall is not be included within the
 18 augmented estate for the purpose of computing the elective
 19 share if the petition is filed later more than 9 months
 20 after the decedent's death. The-court-may-extend-the-time
 21 for-election-as-it-sees-fit-for-cause-shown-by-the-surviving
 22 spouse-before-the-time-for-election-has-expired.

23 (2) The-surviving-spouse-shall-give-notice-of-the--time
 24 and--place--set--for--hearing--to--persons-interested-in-the
 25 estate-and-to-the-distributees-and-recipients-of-portions-of

1 the-augmented-net-estate-whose-interests-will--be--adversely
 2 affected--by--the--taking--of--the--elective-share. Within 9
 3 months after the decedent's death, the surviving spouse may
 4 petition the court for an extension of time for making an
 5 election. If, within 9 months after the decedent's death,
 6 the spouse gives notice of the petition to all persons
 7 interested in the decedent's reclaimable estate, the court
 8 for cause shown by the surviving spouse may extend the time
 9 for election. If the court grants the spouse's petition for
 10 an extension, the decedent's reclaimable estate, described
 11 in 72-2-705(2)(b), is not excluded from the augmented estate
 12 for the purpose of computing the elective-share and
 13 supplemental elective-share amounts if the spouse makes an
 14 election by filing in the court and mailing or delivering to
 15 the personal representative, if any, a petition for the
 16 elective share within the time allowed by the extension.

17 (3) The surviving spouse may withdraw his a demand for
 18 an elective share at any time before entry of a final
 19 determination by the court.

20 (4) After notice and hearing, the court shall determine
 21 the amount--of--the--elective--share elective-share and
 22 supplemental elective-share amounts and shall order its
 23 payment from the assets of the augmented net estate or by
 24 contribution as appears appropriate under 72-2-706. If it
 25 appears that a fund or property included in the augmented

net estate has not come into the possession of the personal representative or has been distributed by the personal representative, the court nevertheless shall fix the liability of any person who has any interest in the fund or property or who has possession thereof, whether as trustee or otherwise. The proceeding may be maintained against fewer than all persons against whom relief could be sought, but no person is subject to contribution in any greater amount than he the person would have been under 72-2-706 if relief had been secured against all persons subject to contribution.

(5) The order or judgment of the court may be enforced as necessary in suit for contribution or payment in other courts of this state or other jurisdictions."

NEW SECTION. Section 56. Applicable law. This part applies to the estate of a decedent who dies domiciled in this state. Rights to homestead allowance, exempt property, and family allowance for a decedent who dies not domiciled in this state are governed by the law of the decedent's domicile at death.

Section 57. Section 72-2-801, MCA, is amended to read:

"72-2-801. **Homestead allowance.** {1} A decedent's surviving spouse ~~of-a-decedent-who--was--domiciled--in--this~~ state is entitled to a homestead allowance of \$20,000. If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead

allowance amounting to \$20,000, divided by the number of minor and dependent children of the decedent.

{2} The homestead allowance is exempt from and has priority over all claims against the estate.

{3} Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share."

Section 58. Section 72-2-802, MCA, is amended to read:

"72-2-802. **Exempt property.** {1} In addition to the homestead allowance, the decedent's surviving spouse ~~of--a~~ decedent--who--was--domiciled-in-this-state is entitled from the estate to a value, not exceeding ~~\$3,500~~ \$10,000 in excess of any security interests therein, in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, the decedent's ~~children of-the-decedent~~ are entitled jointly to the same value. If encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than ~~\$3,500~~ \$10,000 or if there is not ~~\$3,500~~ \$10,000 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the ~~\$3,500~~ \$10,000 value.

{2} Rights to exempt property and assets needed to make

up a deficiency of exempt property have priority over all claims against the estate, ~~except-that but~~ the right to any assets to make up a deficiency of exempt property ~~shall~~ abate abates as necessary to permit prior earlier payment of homestead allowance and family allowance.

{3} These rights are in addition to any benefit or share passing to the surviving spouse or children by the decedent's will ~~of-the-decedent~~ unless otherwise provided, by intestate succession, or by way of elective share."

Section 59. Section 72-2-803, MCA, is amended to read:

"72-2-803. Family allowance. (1) In addition to the right to homestead allowance and exempt property, ~~if-the decedent--was--domiciled--in--this--state,~~ the decedent's surviving spouse and minor children whom the decedent was obligated to support and children who were in fact being supported by him the decedent are entitled to a reasonable allowance in money out of the estate for their maintenance during the period of administration, which allowance may not continue for longer than 1 year if the estate is inadequate to discharge allowed claims. The allowance may be paid as a lump sum or in periodic installments.

{2} It is payable to the surviving spouse, if living, for the use of the surviving spouse and minor and dependent children, otherwise to the children or persons having their care and custody; ~~but-in-case--any~~ If a minor child or

dependent child is not living with the surviving spouse, the allowance may be made partially to the child or his the child's guardian or other person having his the child's care and custody and partially to the spouse, as their needs may appear.

{3} The family allowance is exempt from and has priority over all claims ~~but-not-over~~ except the homestead allowance.

{4}{2} The family allowance is not chargeable against any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share.

{5} The death of any person entitled to family allowance terminates his the right to allowances not yet paid."

Section 60. Section 72-2-804, MCA, is amended to read:

"72-2-804. Source, determination, and documentation.

(1) If the estate is otherwise sufficient, property specifically devised ~~is~~ may not be used to satisfy rights to homestead and allowance or exempt property. Subject to this restriction, the surviving spouse, the guardians of the minor children, or children who are adults may select property of the estate as homestead allowance and exempt property. The personal representative may make ~~these~~ those

selections if the surviving spouse, the children, or the guardians of the minor children are unable or fail to do so within a reasonable time or if there are is no guardians guardian of the a minor children child. The personal representative may execute an instrument or deed of distribution to establish the ownership of property taken as homestead allowance or exempt property. He The personal representative may determine the family allowance in a lump sum not exceeding ~~\$6,000~~ \$18,000 or periodic installments not exceeding ~~\$500~~ \$1,500 per month for 1 year and may disburse funds of the estate in payment of the family allowance and any part of the homestead allowance payable in cash.

{2} The personal representative or any interested person aggrieved by any selection, determination, payment, proposed payment, or failure to act under this section may petition the court for appropriate relief, which relief may provide include a family allowance ~~larger-or--smaller~~ other than that which the personal representative determined or could have determined.

(2) If the right to an elective share is exercised on behalf of a surviving spouse who is an incapacitated person, the personal representative may add any unexpended portions payable under the homestead allowance, exempt property, and family allowance to the trust established under

72-2-703(2)."

NEW SECTION. Section 61. Scope. In the absence of a finding of a contrary intention, the rules of construction in [sections 61 through 72] control the construction of a governing instrument. The rules of construction in [sections 61 through 72] apply to a governing instrument of any type, except as the application of a particular section is limited by its terms to a specific type or types of provision or governing instrument.

NEW SECTION. Section 62. Requirement of survival by one hundred twenty hours. (1) For the purposes of chapters 1 through 5, except for purposes of [sections 103 through 112] and except as provided in subsection (4), an individual who is not established by clear and convincing evidence to have survived an event, including the death of another individual, by 120 hours is considered to have predeceased the event.

(2) Except as provided in subsection (4) and except for a security registered in beneficiary form (TOD) under [sections 103 through 112], for purposes of a provision of a governing instrument that relates to an individual surviving an event, including the death of another individual, an individual who is not established by clear and convincing evidence to have survived the event by 120 hours is considered to have predeceased the event.

1 (3) (a) Except as provided in subsection (4), if:

2 (i) it is not established by clear and convincing

3 evidence that one of two co-owners with right of

4 survivorship survived the other co-owner by 120 hours,

5 one-half of the property passes as if one had survived by

6 120 hours and one-half as if the other had survived by 120

7 hours; and

8 (ii) there are more than two co-owners and it is not

9 established by clear and convincing evidence that at least

10 one of them survived the others by 120 hours, the property

11 passes in the proportion that one bears to the whole number

12 of co-owners.

13 (b) For the purposes of this subsection (3), "co-owners

14 with right of survivorship" includes joint tenants, tenants

15 by the entireties, and other co-owners of property or

16 accounts held under circumstances that entitle one or more

17 to the whole of the property or account on the death of the

18 other or others.

19 (4) This section does not apply if:

20 (a) the governing instrument contains language dealing

21 explicitly with simultaneous deaths or deaths in a common

22 disaster and that language is operable under the facts of

23 the case;

24 (b) the governing instrument expressly indicates that

25 an individual is not required to survive an event, including

1 the death of another individual, by any specified period or

2 expressly requires the individual to survive the event by a

3 specified period;

4 (c) the imposition of a 120-hour requirement of

5 survival would cause a nonvested property interest or a

6 power of appointment to fail to qualify for validity under

7 70-1-802(1)(a), (2)(a), or (3)(a) or to become invalid under

8 70-1-802(1)(b), (2)(b), or (3)(b); or

9 (d) the application of this section to multiple

10 governing instruments would result in an unintended failure

11 or duplication of a disposition.

12 (5) (a) A payor or other third party is not liable for

13 having made a payment or transferred an item of property or

14 any other benefit to a beneficiary designated in a governing

15 instrument who, under this section, is not entitled to the

16 payment or item of property, or for having taken any other

17 action in good faith reliance on the beneficiary's apparent

18 entitlement under the terms of the governing instrument,

19 before the payor or other third party received written

20 notice of a claimed lack of entitlement under this section.

21 A payor or other third party is liable for a payment made or

22 other action taken after the payor or other third party

23 received written notice of a claimed lack of entitlement

24 under this section.

25 (b) Written notice of a claimed lack of entitlement

1 under subsection (5)(a) must be mailed to the payor's or
 2 other third party's main office or home by certified mail,
 3 return receipt requested, or served upon the payor or other
 4 third party in the same manner as a summons in a civil
 5 action. Upon receipt of written notice of a claimed lack of
 6 entitlement under this section, a payor or other third party
 7 may pay any amount owed or transfer or deposit any item of
 8 property held by it to or with the court having jurisdiction
 9 of the probate proceedings relating to the decedent's estate
 10 or, if no proceedings have been commenced, to or with the
 11 court having jurisdiction of probate proceedings relating to
 12 decedents' estates located in the county of the decedent's
 13 residence. The court shall hold the funds or item of
 14 property and, upon its determination under this section,
 15 shall order disbursement in accordance with the
 16 determination. Payments, transfers, or deposits made to or
 17 with the court discharge the payor or other third party from
 18 all claims for the value of amounts paid to or items of
 19 property transferred to or deposited with the court.

20 (6) (a) A person who purchases property for value and
 21 without notice or who receives a payment or other item of
 22 property in partial or full satisfaction of a legally
 23 enforceable obligation is neither obligated under this
 24 section to return the payment, item of property, or benefit
 25 nor liable under this section for the amount of the payment

1 or the value of the item of property or benefit. However, a
 2 person who, not for value, receives a payment, item of
 3 property, or other benefit to which the person is not
 4 entitled under this section is obligated to return the
 5 payment, item of property, or benefit, or is personally
 6 liable for the amount of the payment or the value of the
 7 item of property or benefit, to the person who is entitled
 8 to it under this section.

9 (b) If this section or any part of this section is
 10 preempted by federal law with respect to a payment, an item
 11 of property, or any other benefit covered by this section, a
 12 person who, not for value, receives the payment, item of
 13 property, or other benefit to which the person is not
 14 entitled under this section is obligated to return the
 15 payment, item of property, or benefit, or is personally
 16 liable for the amount of the payment or the value of the
 17 item of property or benefit, to the person who would have
 18 been entitled to it were this section or part of this
 19 section not preempted.

20 NEW SECTION. **Section 63.** Power of appointment --
 21 meaning of specific reference requirement. If a governing
 22 instrument creating a power of appointment expressly
 23 requires that the power be exercised by a reference, an
 24 express reference, or a specific reference to the power or
 25 its source, it is presumed that the donor's intention, in

1 requiring that the donee exercise the power by making
2 reference to the particular power or to the creating
3 instrument, was to prevent an inadvertent exercise of the
4 power.

5 NEW SECTION. Section 64. Class gifts construed to
6 accord with intestate succession. (1) Adopted individuals
7 and individuals born out of wedlock and their respective
8 descendants if appropriate to the class are included in
9 class gifts and other terms of relationship in accordance
10 with the rules for intestate succession. Terms of
11 relationship that do not differentiate relationships by
12 blood from those by affinity, such as "uncles", "aunts",
13 "nieces", or "nephews", are construed to exclude relatives
14 by affinity. Terms of relationship that do not differentiate
15 relationships by the half blood from those by the whole
16 blood, such as "brothers", "sisters", "nieces", or
17 "nephews", are construed to include both types of
18 relationships.

19 (2) In addition to the requirements of subsection (1),
20 in construing a dispositive provision of a transferor who is
21 not the natural parent, an individual born to the natural
22 parent is not considered the child of that parent unless the
23 individual lived while a minor as a regular member of the
24 household of that natural parent or of that parent's parent,
25 brother, sister, spouse, or surviving spouse.

1 (3) In addition to the requirements of subsection (1),
2 in construing a dispositive provision of a transferor who is
3 not the adopting parent, an adopted individual is not
4 considered the child of the adopting parent unless the
5 adopted individual lived while a minor, either before or
6 after the adoption, as a regular member of the household of
7 the adopting parent.

8 NEW SECTION. Section 65. Life insurance -- retirement
9 plan -- account with POD designation -- transfer-on-death
10 registration -- deceased beneficiary. (1) As used in this
11 section, the following definitions apply:

12 (a) "Alternative beneficiary designation" means a
13 beneficiary designation that is expressly created by the
14 governing instrument and that under the terms of the
15 governing instrument may take effect instead of another
16 beneficiary designation on the happening of one or more
17 events, including survival of the decedent or failure to
18 survive the decedent, whether an event is expressed in
19 condition-precedent, condition-subsequent, or any other
20 form.

21 (b) "Beneficiary" means the beneficiary of a
22 beneficiary designation and includes:

23 (i) a class member if the beneficiary designation is in
24 the form of a class gift; and

25 (ii) an individual or class member who was deceased at

1 the time the beneficiary designation was executed as well as
2 an individual or class member who was then living but who
3 failed to survive the decedent.

4 (c) "Beneficiary designation" includes an alternative
5 beneficiary designation and a beneficiary designation in the
6 form of a class gift.

7 (d) "Class member" includes an individual who fails to
8 survive the decedent but who would have taken under a
9 beneficiary designation in the form of a class gift had the
10 individual survived the decedent.

11 (e) "Stepchild" means a child of the decedent's
12 surviving, deceased, or former spouse but not a child of the
13 decedent.

14 (f) "Surviving beneficiary" or "surviving descendant"
15 means a beneficiary or a descendant who neither predeceased
16 the decedent nor is considered to have predeceased the
17 decedent under [section 62].

18 (2) If a beneficiary fails to survive the decedent and
19 is a grandparent, a descendant of a grandparent, or a
20 stepchild of the decedent, the following provisions apply:

21 (a) Except as provided in subsection (2)(d), if the
22 beneficiary designation is not in the form of a class gift
23 and the deceased beneficiary leaves surviving descendants, a
24 substitute gift is created in the beneficiary's surviving
25 descendants. They take by representation the property to

1 which the beneficiary would have been entitled had the
2 beneficiary survived the decedent.

3 (b) Except as provided in subsection (2)(d), if the
4 beneficiary designation is in the form of a class gift,
5 other than a beneficiary designation to "issue",
6 "descendants", "heirs of the body", "heirs", "next of kin",
7 "relatives", or "family" or a class described by language of
8 similar import, a substitute gift is created in the deceased
9 beneficiary or beneficiary's surviving descendants. The
10 property to which the beneficiaries would have been entitled
11 had all of them survived the decedent passes to the
12 surviving beneficiaries and the surviving descendants of the
13 deceased beneficiaries. Each surviving beneficiary takes the
14 share to which the surviving beneficiary would have been
15 entitled had the deceased beneficiaries survived the
16 decedent. Each deceased beneficiary's surviving descendants
17 who are substituted for the deceased beneficiary take by
18 representation the share to which the deceased beneficiary
19 would have been entitled had the deceased beneficiary
20 survived the decedent. For purposes of this subsection (b),
21 "deceased beneficiary" means a class member who failed to
22 survive the decedent and left one or more surviving
23 descendants.

24 (c) For the purposes of [section 61], words of
25 survivorship, such as in a beneficiary designation to an

individual "if the individual survives me" or in a beneficiary designation to "my surviving children", are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section.

(d) If a governing instrument creates an alternative beneficiary designation with respect to a beneficiary designation for which a substitute gift is created by subsection (2)(a) or (2)(b), the substitute gift is superseded by the alternative beneficiary designation only if an expressly designated beneficiary of the alternative beneficiary designation is entitled to take.

(3) If, under subsection (2), substitute gifts are created and not superseded with respect to more than one beneficiary designation and the beneficiary designations are alternative beneficiary designations, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(a) Except as provided in subsection (3)(b), the property passes under the primary substitute gift.

(b) If there is a younger-generation beneficiary designation, the property passes under the younger-generation substitute gift and not under the primary substitute gift.

(c) As used in this subsection (3), the following

definitions apply:

(i) "Primary beneficiary designation" means the beneficiary designation that would have taken effect had all the deceased beneficiaries of the alternative beneficiary designations who left surviving descendants survived the decedent.

(ii) "Primary substitute gift" means the substitute gift created with respect to the primary beneficiary designation.

(iii) "Younger-generation beneficiary designation" means a beneficiary designation that:

(A) is to a descendant of a beneficiary of the primary beneficiary designation;

(B) is an alternative beneficiary designation with respect to the primary beneficiary designation;

(C) is a beneficiary designation for which a substitute gift is created; and

(D) would have taken effect had all the deceased beneficiaries who left surviving descendants survived the decedent except the deceased beneficiary or beneficiaries of the primary beneficiary designation.

(iv) "Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation beneficiary designation.

(4) (a) A payor is protected from liability in making payments under the terms of the beneficiary designation

1 until the payor has received written notice of a claim to a
 2 substitute gift under this section. Payment made before the
 3 receipt of written notice of a claim to a substitute gift
 4 under this section discharges the payor, but not the
 5 recipient, from all claims for the amounts paid. A payor is
 6 liable for a payment made after the payor has received
 7 written notice of the claim. A recipient is liable for a
 8 payment received, whether or not written notice of the claim
 9 is given.

10 (b) The written notice of the claim must be mailed to
 11 the payor's main office or home by certified mail, return
 12 receipt requested, or served upon the payor in the same
 13 manner as a summons in a civil action. Upon receipt of
 14 written notice of the claim, a payor may pay any amount owed
 15 by it to the court having jurisdiction of the probate
 16 proceedings relating to the decedent's estate or, if no
 17 proceedings have been commenced, to the court having
 18 jurisdiction of probate proceedings relating to decedents'
 19 estates located in the county of the decedent's residence.
 20 The court shall hold the funds and, upon its determination
 21 under this section, shall order disbursement in accordance
 22 with the determination. Payment made to the court discharges
 23 the payor from all claims for the amounts paid.

24 (5) (a) A person who purchases property for value and
 25 without notice or who receives a payment or other item of

1 property in partial or full satisfaction of a legally
 2 enforceable obligation is neither obligated under this
 3 section to return the payment, item of property, or benefit
 4 nor liable under this section for the amount of the payment
 5 or the value of the item of property or benefit. However, a
 6 person who, not for value, receives a payment, item of
 7 property, or other benefit to which the person is not
 8 entitled under this section is obligated to return the
 9 payment, item of property, or benefit, or is personally
 10 liable for the amount of the payment or the value of the
 11 item of property or benefit, to the person who is entitled
 12 to it under this section.

13 (b) If this section or any part of this section is
 14 preempted by federal law with respect to a payment, an item
 15 of property, or any other benefit covered by this section, a
 16 person who, not for value, receives the payment, item of
 17 property, or other benefit to which the person is not
 18 entitled under this section is obligated to return the
 19 payment, item of property, or benefit, or is personally
 20 liable for the amount of the payment or the value of the
 21 item of property or benefit, to the person who would have
 22 been entitled to it were this section or part of this
 23 section not preempted.

24 NEW SECTION. **Section 66.** Survivorship with respect to
 25 future interests under terms of trust -- substitute takers.

1 (1) As used in this section, the following definitions
2 apply:

3 (a) "Alternative future interest" means an expressly
4 created future interest that may take effect in possession
5 or enjoyment instead of another future interest on the
6 happening of one or more events, including survival of an
7 event or failure to survive an event, whether an event is
8 expressed in condition-precedent, condition-subsequent, or
9 any other form. A residuary clause in a will does not create
10 an alternative future interest with respect to a future
11 interest created in a nonresiduary devise in the will,
12 whether or not the will specifically provides that lapsed or
13 failed devises are to pass under the residuary clause.

14 (b) "Beneficiary" means the beneficiary of a future
15 interest and includes a class member if the future interest
16 is in the form of a class gift.

17 (c) "Class member" includes an individual who fails to
18 survive the distribution date but who would have taken under
19 a future interest in the form of a class gift had the
20 individual survived the distribution date.

21 (d) "Distribution date" with respect to a future
22 interest means the time when the future interest is to take
23 effect in possession or enjoyment. The distribution date
24 need not occur at the beginning or end of a calendar day,
25 but may occur at a time during the course of a day.

1 (e) "Future interest" includes an alternative future
2 interest and a future interest in the form of a class gift.

3 (f) "Future interest under the terms of a trust" means
4 a future interest that was created by a transfer creating a
5 trust or to an existing trust or by an exercise of a power
6 of appointment to an existing trust that directs the
7 continuance of an existing trust, designates a beneficiary
8 of an existing trust, or creates a trust.

9 (g) "Surviving beneficiary" or "surviving descendant"
10 means a beneficiary or a descendant who neither predeceased
11 the distribution date nor is considered to have predeceased
12 the distribution date under [section 62].

13 (2) A future interest under the terms of a trust is
14 contingent on the beneficiary surviving the distribution
15 date. If a beneficiary of a future interest under the terms
16 of a trust fails to survive the distribution date, the
17 following provisions apply:

18 (a) Except as provided in subsection (2)(d), if the
19 future interest is not in the form of a class gift and the
20 deceased beneficiary leaves surviving descendants, a
21 substitute gift is created in the beneficiary's surviving
22 descendants. They take by representation the property to
23 which the beneficiary would have been entitled had the
24 beneficiary survived the distribution date.

25 (b) Except as provided in subsection (2)(d), if the

1 future interest is in the form of a class gift, other than a
 2 future interest to "issue", "descendants", "heirs of the
 3 body", "heirs", "next of kin", "relatives", or "family" or a
 4 class described by language of similar import, a substitute
 5 gift is created in the deceased beneficiary or beneficiary's
 6 surviving descendants. The property to which the
 7 beneficiaries would have been entitled had all of them
 8 survived the distribution date passes to the surviving
 9 beneficiaries and the surviving descendants of the deceased
 10 beneficiaries. Each surviving beneficiary takes the share to
 11 which the surviving beneficiary would have been entitled had
 12 the deceased beneficiaries survived the distribution date.
 13 Each deceased beneficiary's surviving descendants who are
 14 substituted for the deceased beneficiary take by
 15 representation the share to which the deceased beneficiary
 16 would have been entitled had the deceased beneficiary
 17 survived the distribution date. For purposes of this
 18 subsection (2), "deceased beneficiary" means a class member
 19 who failed to survive the distribution date and left one or
 20 more surviving descendants.

21 (c) For the purposes of [section 61], words of
 22 survivorship attached to a future interest are not, in the
 23 absence of additional evidence, a sufficient indication of
 24 an intent contrary to the application of this section. Words
 25 of survivorship include words of survivorship that relate to

1 the distribution date or to an earlier or an unspecified
 2 time, whether those words of survivorship are expressed in
 3 condition-precedent, condition-subsequent, or any other
 4 form.

5 (d) If a governing instrument creates an alternative
 6 future interest with respect to a future interest for which
 7 a substitute gift is created by subsection (2)(a) or (2)(b),
 8 the substitute gift is superseded by the alternative future
 9 interest only if an expressly designated beneficiary of the
 10 alternative future interest is entitled to take in
 11 possession or enjoyment.

12 (3) If, under subsection (2), substitute gifts are
 13 created and not superseded with respect to more than one
 14 future interest and the future interests are alternative
 15 future interests, one to the other, the determination of
 16 which of the substitute gifts takes effect is resolved as
 17 follows:

18 (a) Except as provided in subsection (3)(b), the
 19 property passes under the primary substitute gift.

20 (b) If there is a younger-generation future interest,
 21 the property passes under the younger-generation substitute
 22 gift and not under the primary substitute gift.

23 (c) As used in this subsection (3), the following
 24 definitions apply:

25 (i) "Primary future interest" means the future interest

1 that would have taken effect had all the deceased
2 beneficiaries of the alternative future interests who left
3 surviving descendants survived the distribution date.

4 (ii) "Primary substitute gift" means the substitute gift
5 created with respect to the primary future interest.

6 (iii) "Younger-generation future interest" means a
7 future interest that:

8 (A) is to a descendant of a beneficiary of the primary
9 future interest;

10 (B) is an alternative future interest with respect to
11 the primary future interest;

12 (C) is a future interest for which a substitute gift is
13 created; and

14 (D) would have taken effect had all the deceased
15 beneficiaries who left surviving descendants survived the
16 distribution date except the deceased beneficiary or
17 beneficiaries of the primary future interest.

18 (iv) "Younger-generation substitute gift" means the
19 substitute gift created with respect to the
20 younger-generation future interest.

21 (4) If, after the application of subsections (2) and
22 (3), there is no surviving taker, the property passes in the
23 following order:

24 (a) if the trust was created in a nonresiduary devise
25 in the transferor's will or in a codicil to the transferor's

1 will, the property passes under the residuary clause in the
2 transferor's will. For purposes of this section, the
3 residuary clause is treated as creating a future interest
4 under the terms of a trust.

5 (b) if no taker is produced by the application of
6 subsection (4)(a), the property passes to the transferor's
7 heirs under [section 70].

8 NEW SECTION. **Section 67.** Class gifts to "descendants",
9 "issue", or "heirs of the body" -- form of distribution if
10 none specified. If a class gift in favor of "descendants",
11 "issue", or "heirs of the body" does not specify the manner
12 in which the property is to be distributed among the class
13 members, the property is distributed among the class members
14 who are living when the interest is to take effect in
15 possession or enjoyment in such shares as they would receive
16 under the applicable law of intestate succession if the
17 designated ancestor had then died intestate owning the
18 subject matter of the class gift.

19 NEW SECTION. **Section 68.** Representation -- per capita
20 at each generation -- per stirpes. (1) As used in this
21 section, the following definitions apply:

22 (a) "Deceased child" or "deceased descendant" means a
23 child or a descendant who either predeceased the
24 distribution date or is considered to have predeceased the
25 distribution date under [section 62].

(b) "Distribution date", with respect to an interest, means the time when the interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day but may occur at a time during the course of a day.

(c) "Surviving ancestor", "surviving child", or "surviving descendant" means an ancestor, a child, or a descendant who neither predeceased the distribution date nor is considered to have predeceased the distribution date under [section 62].

(2) (a) If an applicable statute or a governing instrument calls for property to be distributed "by representation" or "per capita at each generation", the property is divided into as many equal shares as there are:

(i) surviving descendants in the generation nearest to the designated ancestor that contains one or more surviving descendants; and

(ii) deceased descendants in the same generation who left surviving descendants, if any.

(b) Each surviving descendant in the nearest generation is allocated one share. The remaining shares, if any, are combined and then divided in the same manner among the surviving descendants of the deceased descendants as if the surviving descendants who were allocated a share and their surviving descendants had predeceased the distribution date.

(3) (a) If a governing instrument calls for property to be distributed "per stirpes", the property is divided into as many equal shares as there are:

(i) surviving children of the designated ancestor; and

(ii) deceased children who left surviving descendants.

(b) Each surviving child is allocated one share. The share of each deceased child with surviving descendants is divided in the same manner, with subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants.

(4) For the purposes of subsections (2) and (3), an individual who is deceased and left no surviving descendant is disregarded and an individual who leaves a surviving ancestor who is a descendant of the designated ancestor is not entitled to a share.

NEW SECTION. Section 69. Worthier title doctrine abolished. The doctrine of worthier title is abolished as a rule of law and as a rule of construction. Language in a governing instrument describing the beneficiaries of a disposition as the transferor's "heirs", "heirs at law", "next of kin", "distributees", "relatives", or "family" or language of similar import does not create or presumptively create a reversionary interest in the transferor.

NEW SECTION. Section 70. Future interests in "heirs" and like. If an applicable statute or a governing instrument

1 calls for a future distribution to or creates a future
 2 interest in a designated individual's "heirs", "heirs at
 3 law", "next of kin", "relatives", or "family" or language of
 4 similar import, the property passes to those persons,
 5 including the state under 72-2-207, and in such shares as
 6 would succeed to the designated individual's intestate
 7 estate under the intestate succession law of the designated
 8 individual's domicile in effect at the time the disposition
 9 is to take effect in possession or enjoyment as if the
 10 designated individual died at that time. If the designated
 11 individual's surviving spouse is living but is remarried at
 12 the time the disposition is to take effect in possession or
 13 enjoyment, the surviving spouse is not an heir of the
 14 designated individual.

15 **NEW SECTION. Section 71. Revocation of probate and**
 16 **nonprobate transfers by divorce -- no revocation by other**
 17 **changes of circumstances. (1) As used in this section, the**
 18 **following definitions apply:**

19 (a) "Disposition or appointment of property" includes a
 20 transfer of an item of property or any other benefit to a
 21 beneficiary designated in a governing instrument.

22 (b) "Divorce or annulment" means any divorce,
 23 annulment, or dissolution or declaration of invalidity of a
 24 marriage that would exclude the spouse as a surviving spouse
 25 within the meaning of 72-2-103. A decree of separation that

1 does not terminate the status of husband and wife is not a
 2 divorce for purposes of this section.

3 (c) "Divorced individual" includes an individual whose
 4 marriage has been annulled.

5 (d) "Governing instrument" means a governing instrument
 6 executed by the divorced individual before the divorce or
 7 annulment of the individual's marriage to the individual's
 8 former spouse.

9 (e) "Relative of the divorced individual's former
 10 spouse" means an individual who is related to the divorced
 11 individual's former spouse by blood, adoption, or affinity
 12 and who, after the divorce or annulment, is not related to
 13 the divorced individual by blood, adoption, or affinity.

14 (f) "Revocable", with respect to a disposition,
 15 appointment, provision, or nomination, means one under which
 16 the divorced individual, at the time of the divorce or
 17 annulment, was alone empowered, by law or under the
 18 governing instrument, to cancel the designation in favor of
 19 the individual's former spouse or former spouse's relative,
 20 whether or not the divorced individual was then empowered to
 21 designate the divorced individual in place of the
 22 individual's former spouse or in place of the former
 23 spouse's relative and whether or not the divorced individual
 24 then had the capacity to exercise the power.

25 (2) Except as provided by the express terms of a

1 governing instrument, a court order, or a contract relating
 2 to the division of the marital estate made between the
 3 divorced individuals before or after the marriage, divorce,
 4 or annulment, the divorce or annulment of a marriage:

5 (a) revokes any revocable:

6 (i) disposition or appointment of property made by a
 7 divorced individual to the individual's former spouse in a
 8 governing instrument and any disposition or appointment
 9 created by law or in a governing instrument to a relative of
 10 the divorced individual's former spouse;

11 (ii) provision in a governing instrument conferring a
 12 general or nongeneral power of appointment on the divorced
 13 individual's former spouse or on a relative of the divorced
 14 individual's former spouse; and

15 (iii) nomination in a governing instrument that
 16 nominates a divorced individual's former spouse or a
 17 relative of the divorced individual's former spouse to serve
 18 in any fiduciary or representative capacity, including a
 19 personal representative, executor, trustee, conservator,
 20 agent, or guardian; and

21 (b) severs the interests of the former spouses in
 22 property held by them at the time of the divorce or
 23 annulment as joint tenants with the right of survivorship
 24 and transforms the interests of the former spouses into
 25 tenancies in common.

1 (3) A severance under subsection (2)(b) does not affect
 2 any third-party interest in property acquired for value and
 3 in good faith reliance on an apparent title by survivorship
 4 in the survivor of the former spouses unless a writing
 5 declaring the severance has been noted, registered, filed,
 6 or recorded in records appropriate to the kind and location
 7 of the property, which records are relied upon, in the
 8 ordinary course of transactions involving such property, as
 9 evidence of ownership.

10 (4) Provisions of a governing instrument that are not
 11 revoked by this section are given effect as if the former
 12 spouse and relatives of the former spouse disclaimed the
 13 revoked provisions or, in the case of a revoked nomination
 14 in a fiduciary or representative capacity, as if the former
 15 spouse and relatives of the former spouse died immediately
 16 before the divorce or annulment.

17 (5) Provisions revoked solely by this section are
 18 revived by the divorced individual's remarriage to the
 19 former spouse or by a nullification of the divorce or
 20 annulment.

21 (6) No change of circumstances other than as described
 22 in this section and in 72-2-104 effects a revocation.

23 (7) (a) A payor or other third party is not liable for
 24 having made a payment or transferred an item of property or
 25 any other benefit to a beneficiary designated in a governing

1 instrument affected by a divorce, annulment, or remarriage,
2 or for having taken any other action in good faith reliance
3 on the validity of the governing instrument, before the
4 payor or other third party received written notice of the
5 divorce, annulment, or remarriage. A payor or other third
6 party is liable for a payment made or other action taken
7 after the payor or other third party received written notice
8 of a claimed forfeiture or revocation under this section.

9 (b) Written notice of the divorce, annulment, or
10 remarriage under subsection (7)(a) must be mailed to the
11 payor's or other third party's main office or home by
12 certified mail, return receipt requested, or served upon the
13 payor or other third party in the same manner as a summons
14 in a civil action. Upon receipt of written notice of the
15 divorce, annulment, or remarriage, a payor or other third
16 party may pay any amount owed or transfer or deposit any
17 item of property held by it to or with the court having
18 jurisdiction of the probate proceedings relating to the
19 decedent's estate or, if no proceedings have been commenced,
20 to or with the court having jurisdiction of probate
21 proceedings relating to decedents' estates located in the
22 county of the decedent's residence. The court shall hold the
23 funds or item of property and, upon its determination under
24 this section, shall order disbursement or transfer in
25 accordance with the determination. Payments, transfers, or

1 deposits made to or with the court discharge the payor or
2 other third party from all claims for the value of amounts
3 paid to or items of property transferred to or deposited
4 with the court.

5 (8) (a) A person who purchases property from a former
6 spouse, relative of a former spouse, or any other person for
7 value and without notice or who receives from a former
8 spouse, relative of a former spouse, or any other person a
9 payment or other item of property in partial or full
10 satisfaction of a legally enforceable obligation is neither
11 obligated under this section to return the payment, item of
12 property, or benefit nor liable under this section for the
13 amount of the payment or the value of the item of property
14 or benefit. However, a former spouse, relative of a former
15 spouse, or other person who, not for value, received a
16 payment, item of property, or other benefit to which that
17 person is not entitled under this section is obligated to
18 return the payment, item of property, or benefit, or is
19 personally liable for the amount of the payment or the value
20 of the item of property or benefit, to the person who is
21 entitled to it under this section.

22 (b) If this section or any part of this section is
23 preempted by federal law with respect to a payment, an item
24 of property, or any other benefit covered by this section, a
25 former spouse, relative of the former spouse, or any other

1 person who, not for value, received a payment, item of
 2 property, or other benefit to which that person is not
 3 entitled under this section is obligated to return that
 4 payment, item of property, or benefit, or is personally
 5 liable for the amount of the payment or the value of the
 6 item of property or benefit, to the person who would have
 7 been entitled to it were this section or part of this
 8 section not preempted.

9 NEW SECTION. Section 72. Honorary trusts -- trusts for
 10 pets. (1) A trust for a noncharitable corporation or
 11 unincorporated society or for a lawful noncharitable purpose
 12 may be performed by the trustee for 21 years but no longer,
 13 whether or not there is a beneficiary who can seek the
 14 trust's enforcement or termination and whether or not the
 15 terms of the trust contemplate a longer duration.

16 (2) Subject to the provisions of this subsection, a
 17 trust for the care of a designated domestic or pet animal
 18 and the animal's offspring is valid. Except as expressly
 19 provided otherwise in the trust instrument, the following
 20 provisions apply:

21 (a) No portion of the principal or income may be
 22 converted to the use of the trustee or to any use other than
 23 for the benefit of a covered animal.

24 (b) The trust terminates at the earlier of 21 years
 25 after the trust was created or when no living animal is

1 covered by the trust.

2 (c) Upon termination, the trustee shall transfer the
 3 unexpended trust property in the following order:

4 (i) as directed in the trust instrument;

5 (ii) if the trust was created in a nonresiduary clause
 6 in the transferor's will or in a codicil to the transferor's
 7 will, under the residuary clause in the transferor's will;
 8 and

9 (iii) if no taker is produced by the application of
 10 subsection (2)(c)(i) or (2)(c)(ii), to the transferor's
 11 heirs under [section 70].

12 (d) For the purposes of [section 66], the residuary
 13 clause is treated as creating a future interest under the
 14 terms of a trust.

15 (e) The intended use of the principal or income may be
 16 enforced by an individual designated for that purpose in the
 17 trust instrument or, if none, by an individual appointed by
 18 a court upon application to it by an individual.

19 (f) Except as ordered by the court or required by the
 20 trust instrument, no filing, report, registration, periodic
 21 accounting, separate maintenance of funds, appointment, or
 22 fee is required by reason of the existence of the fiduciary
 23 relationship of the trustee.

24 (g) A governing instrument must be liberally construed
 25 to bring the transfer within the applicability of this

section, to presume against the merely precatory or honorary nature of the disposition, and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

(h) A court may reduce the amount of the property transferred if it determines that that amount substantially exceeds the amount required for the intended use. The amount of the reduction, if any, passes as unexpended trust property under subsection (2)(c).

(i) If no trustee is designated or no designated trustee is willing or able to serve, a court shall name a trustee. A court may order the transfer of the property to another trustee if required to ensure that the intended use is carried out and if no successor trustee is designated in the trust instrument or if no designated successor trustee agrees to serve or is able to serve. A court may also make such other orders and determinations as are advisable to carry out the intent of the transferor and the purpose of this section.

Section 73. Section 72-3-212, MCA, is amended to read:

"72-3-212. Informal probate -- clerk to make findings.

In an informal proceeding for original probate of a will, the clerk shall determine whether:

- (1) the application is complete;
- (2) the applicant has made oath or affirmation that the

statements contained in the application are true to the best of ~~his~~ the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103(2);

(4) on the basis of the statements in the application, venue is proper;

(5) an original, duly executed, and apparently unrevoked will is in the clerk's possession;

(6) any notice required by 72-3-106 has been given and that the application is not within 72-3-213(5); and

(7) it appears from the application that the time limit for original probate has not expired."

Section 74. Section 72-3-213, MCA, is amended to read:

"72-3-213. Rules for grant or denial of informal probate. (1) A will ~~which that~~ appears to have the required signatures and ~~which that~~ contains an attestation clause showing that requirements of execution under 72-2-302, 72-2-303, or 72-2-306 have been met ~~shall~~ must be probated without further proof. In other cases the clerk may assume execution if the will appears to be properly executed, or he may accept a sworn statement or affidavit of any person having knowledge of the circumstances of execution, whether or not the person was a witness to the will.

(2) The application ~~shall~~ must be denied if it indicates that a personal representative has been appointed

in another county of this state or, except as provided in subsection (3) below, if it appears that this or another will of the decedent has been the subject of a previous probate order.

(3) Informal probate of a will ~~which~~ that has been previously probated elsewhere may be granted at any time upon written application by any interested person, together with deposit of an authenticated copy of the will and of the statement probating it from the office or court where it was first probated.

(4) A will from a place ~~which~~ that does not provide for probate of a will after death and ~~which~~ that is not eligible for probate under 72-3-212 may be probated in this state upon receipt by the clerk of a duly authenticated copy of the will and a duly authenticated certificate of its legal custodian that the copy filed is a true copy and that the will has become operative under the law of the other place.

(5) Application for informal probate ~~which~~ that relates to one or more of a known series of testamentary instruments (other than a will and one or more codicils to the will), the latest of which does not expressly revoke the earlier, ~~shall~~ must be declined."

Section 75. Section 72-3-222, MCA, is amended to read:

"72-3-222. Informal appointment -- clerk to make findings. In informal appointment proceedings, the clerk

~~must~~ shall determine whether:

(1) the application for informal appointment of a personal representative is complete;

(2) the applicant has made oath or affirmation that the statements contained in the application are true to the best of ~~his~~ the applicant's knowledge and belief;

(3) the applicant appears from the application to be an interested person as defined in 72-1-103~~(2)~~;

(4) on the basis of the statements in the application, venue is proper;

(5) any will to which the requested appointment relates has been formally or informally probated, but this requirement does not apply to the appointment of a special administrator;

(6) any notice required by 72-3-106 has been given;

(7) from the statements in the application, the person whose appointment is sought has priority entitling ~~him~~ the person to the appointment."

Section 76. Section 72-11-101, MCA, is amended to read:

"72-11-101. Degrees of kindred kinship -- how computed. The degree of kindred kinship is established by the number of generations, and each generation is called a degree."

Section 77. Section 72-11-102, MCA, is amended to read:

"72-11-102. Degrees Types of kindred kinship -- lineal and collateral consanguinity. The-series--of--degrees--forms

the--line;--the--series--of--degrees There are two types of kinship, lineal and collateral. Lineal kinship, or the direct line of consanguinity, is the relationship between persons, who descend from one another is--called--direct--or lineal--consanguinity; of whom is a descendant of the other. and--the--series--of--degrees Collateral kinship is the relationship between persons people who do not descend from one another but spring from a common ancestor is--called--the collateral but are not in a direct line or collateral consanguinity."

Section 78. Section 72-11-103, MCA, is amended to read:

"72-11-103. Degrees--of--kindred-----ascending---and descending--direct--line Computation of degrees in lineal kinship. The direct--line--is--divided--into--a--direct--line descending--and--a--direct--line--ascending degree of lineal kinship of two persons is computed by counting one degree for each person in the line of ascent or descent, exclusive of the person from whom the computing begins. The child is, with regard to the parent, in the first degree; the grandchild is, with regard to the grandparent, in the is that--which--connects--an--ancestor--with--those--who--descend--from him;--The second degree; is--that--which--connects--a--person--with those--from--whom--he--descends and vice versa as to the parent and grandparent with regard to their respective children and grandchildren."

Section 79. Section 72-11-104, MCA, is amended to read:

"72-11-104. Degrees---of---kindred-----computation Computation of degrees in direct--line collateral kinship. In the--direct--line--there--are--as--many--degrees--as--there--are generations;--Thus, the son is with regard to the--father--in the--first The degree of collateral kinship of two persons is computed by commencing with one of the persons, ascending from that person to a common ancestor, descending from that ancestor to the other person, and counting one degree for each person in the line of ascent and in the line of descent, exclusive of the person from whom the computation begins;--the--grandson Siblings are related to each other in the second degree;--and--vice--versa--with--regard--to--the--father and--grandfather--toward--the--sons--and--grandsons uncle and niece are related to each other in the third degree, and first cousins are related to each other in the fourth degree."

Section 80. Section 72-12-206, MCA, is amended to read:

"72-12-206. Fees and expenses -- by whom paid. When the validity or probate of a will is contested through court action, the attorney fees and expenses costs, as provided in 25-10-201, incurred in defending the validity or probate of the will must be paid by the party contesting the validity or probate of the will, if the will in probate is confirmed. If the probate is revoked, the costs, as provided in

25-10-201, but not attorney fees, must be paid by the party who resisted the revocation or out of the property of the decedent, as the court directs."

Section 81. Section 72-16-313, MCA, is amended to read:

"72-16-313. Exemptions of spouse and other relatives.

(1) The clear value of all property distributed or passing to a decedent's surviving spouse is exempt.

(2) The clear value of all property distributed or passing to the following is exempt:

(a) any child or lineal descendant of the decedent. A determination as to establishment of the parent and child relationship or establishment of a person as a lineal descendant must be made in accordance with the rules for determining relationship for purposes of intestate succession under Title 72, chapter 2, part 2.

(b) any child---to---whom stepchild, as defined in 72-2-512, of the decedent, prior-to-the-transfer,---stood---in the---mutually---acknowledged---relationship---of---a---parent---or stepparent, provided the relationship began on or before the child's stepchild's 18th birthday.

(3) The following amounts are exempt:

(a) property of the clear value of \$7,000 transferred to each of the persons who have attained majority described in 72-16-321(1); and

(b) property of the clear value of \$1,000 transferred

to each of the persons described in 72-16-321(2)."

Section 82. Section 72-36-206, MCA, is amended to read:

"72-36-206. Effects on real property transactions. (1) This section relates only to conveyances of real property to or from a trust, and supplements, but does not modify other substantive provisions of chapters 33 through 36 relating to the creation or validity of trusts. ~~This--section--does--not affect-conveyances-recorded-prior-to-October-17-1989-~~

(2) Except as otherwise provided in chapters 33 through 36, a conveyance of real property to a trustee designated as such in the conveyance vests the whole estate conveyed in the trustee, subject only to the trustee's duties. The beneficiaries of the trust take no estate or interest in the real property, but may determine or enforce the terms of the trust as provided in chapters 33 through 36.

(3) An instrument creating or amending a trust need not be recorded, but may be if properly acknowledged.

(4) If there is no clear reference to or designation of a grantee as trustee in a conveyance (nor in a separately recorded instrument recorded in the same county as the conveyance and describing the same property as described in the conveyance), the conveyance ~~shall~~ must be considered to be absolute to the grantee, in favor of purchasers or encumbrancers from the grantee, who were without actual knowledge and who acted for a valuable consideration,

despite any valid trust which may exist.

(5) Unless limitations upon a trustee's power or authority are set forth in the recorded conveyance of real property to the trustee or in a separate trust instrument (or portion thereof, or abstract thereof) recorded in the same county, there are no limitations upon the trustee's power or authority to convey or encumber the real property in favor of third persons who were without actual knowledge and who acted for a valuable consideration. A separate trust instrument incorporated by reference in a conveyance to a trustee cannot limit the trustee's power or authority to convey or encumber unless the limitations are set forth in the trust instrument (or portion thereof or abstract thereof) which is also recorded in the county where the real property is located. An amendment to a recorded trust instrument may not affect the power or authority of a trustee to convey or encumber unless it is also recorded in the same place.

(6) A subsequent conveyance from a person designated in the original conveyance as trustee (or from his successor trustee) conveys the whole estate vested in the trustee, except as limited by the terms of the conveyance. The identity of any successor trustee may be established by a recorded affidavit of the successor trustee specifying his the successor trustee's name and address and the date and

circumstances of his succession, and confirming that he the successor trustee is currently lawfully serving in such that capacity.

(7) In an action or proceeding by a third person involving the real property granted to a trustee, the person designated as trustee in the original conveyance, or the successor trustee as established in subsection (6), or, if none, the person then actually serving as trustee, or, if none, any beneficiary designated by the court to represent the interests of the beneficiaries, shall be considered the only necessary representative of the trust and of all persons with an interest therein in the trust. A judgment is binding upon and conclusive against the trust and all persons interested therein in the trust as to all matters finally adjudicated in the judgment.

(8) The designation of the name of a trust in a recorded conveyance vests the estate in the trustee of the trust. A subsequent conveyance may be made by the trustee. The identity of a party serving as trustee may be established by a recorded affidavit of the party or by other recorded instrument, specifying the trustee's name and address and confirming that he the party is currently serving as the trustee."

NEW SECTION. Section 83. Nonprobate transfers on death. (1) A provision for a nonprobate transfer on death in

an insurance policy, contract of employment, bond, mortgage, promissory note, certificated or uncertificated security, account agreement, custodial agreement, deposit agreement, compensation plan, pension plan, individual retirement plan, employee benefit plan, trust, conveyance, deed of gift, marital property agreement, or other written instrument of a similar nature is nontestamentary. This subsection includes a written provision that:

(a) money or other benefits due to, controlled by, or owned by a decedent before death must be paid after the decedent's death to a person whom the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later;

(b) money due or to become due under the instrument ceases to be payable in the event of death of the promisee or the promisor before payment or demand; or

(c) any property controlled by or owned by the decedent before death that is the subject of the instrument passes to a person the decedent designates either in the instrument or in a separate writing, including a will, executed either before or at the same time as the instrument or later.

(2) This section does not limit rights of creditors under other laws of this state.

NEW SECTION. **Section 84.** Definitions. In [sections 84

through 102], the following definitions apply:

(1) "Account" means a contract of deposit between a depositor and a financial institution and includes a checking account, savings account, certificate of deposit, and share account.

(2) "Agent" means a person authorized to make account transactions for a party.

(3) "Beneficiary" means a person named as one to whom sums on deposit in an account are payable on request after death of all parties or for whom a party is named as trustee.

(4) "Financial institution" means an organization authorized to do business under state or federal laws relating to financial institutions and includes a bank, trust company, savings bank, building and loan association, savings and loan company or association, and credit union.

(5) "Multiple-party account" means an account payable on request to one or more of two or more parties, whether or not a right of survivorship is mentioned.

(6) "Party" means a person who, by the terms of an account, has a present right, subject to request, to payment from the account other than as a beneficiary or agent.

(7) "Payment" of sums on deposit includes withdrawal, payment to a party or third person pursuant to check or other request, and a pledge of sums on deposit by a party or

a setoff, reduction, or other disposition of all or part of an account pursuant to a pledge.

(8) "POD designation" means the designation of:

(a) a beneficiary in an account payable on request to one party during the party's lifetime and on the party's death to one or more beneficiaries or to one or more parties during their lifetimes and on death of all of them to one or more beneficiaries; or

(b) a beneficiary in an account in the name of one or more parties as trustee for one or more beneficiaries if the relationship is established by the terms of the account and there is no subject of the trust other than the sums on deposit in the account, whether or not payment to the beneficiary is mentioned.

(9) "Receive", as it relates to notice to a financial institution, means receipt in the office or branch office of the financial institution in which the account is established or, if the terms of the account require notice at a particular place, in the place required.

(10) "Request" means a request for payment that complies with all terms of the account, including special requirements concerning necessary signatures and regulations of the financial institution; however, for purposes of [sections 84 through 102], if terms of the account condition payment on advance notice, a request for payment is treated

as immediately effective and a notice of intent to withdraw is treated as a request for payment.

(11) "Sums on deposit" means the balance payable on an account, including interest and dividends earned, whether or not included in the current balance, and any deposit life insurance proceeds added to the account by reason of death of a party.

(12) "Terms of the account" includes the deposit agreement and other terms and conditions, including the form, of the contract of deposit.

NEW SECTION. **Section 85.** Limitation on scope of [sections 84 through 102]. [Sections 84 through 102] do not apply to:

(1) an account established for a partnership, joint venture, or other organization for a business purpose;

(2) an account controlled by one or more persons as an agent or trustee for a corporation, unincorporated association, or charitable or civic organization; or

(3) a fiduciary or trust account in which the relationship is established other than by the terms of the account.

NEW SECTION. **Section 86.** Types of account -- existing accounts. (1) An account may be for a single party or multiple parties. A multiple-party account may be with or without a right of survivorship between the parties. Subject

to [section 91(3)], either a single-party account or a multiple-party account may have a POD designation, an agency designation, or both.

(2) An account established before, on, or after [the effective date of this act], whether in the form prescribed in [section 87] or in any other form, is either a single-party account or a multiple-party account, with or without right of survivorship and with or without a POD designation or an agency designation, within the meaning of [sections 84 through 102], and is governed by [sections 84 through 102].

NEW SECTION. Section 87. Forms. (1) A contract of deposit that contains provisions in substantially the following form establishes the type of account provided, and the account is governed by the provisions of [sections 84 through 102] applicable to an account of that type:

UNIFORM SINGLE- OR MULTIPLE-PARTY ACCOUNT FORM

PARTIES [Name One or More Parties]:

.....

OWNERSHIP [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

..... MULTIPLE-PARTY ACCOUNT

Parties own account in proportion to net contributions unless there is clear and convincing evidence of a different intent.

RIGHTS AT DEATH [Select One and Initial]:

..... SINGLE-PARTY ACCOUNT

At death of party, ownership passes as part of party's estate.

..... SINGLE-PARTY ACCOUNT WITH POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

.....

At death of party, ownership passes to POD beneficiaries and is not part of party's estate.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

At death of party, ownership passes to surviving parties.

..... MULTIPLE-PARTY ACCOUNT WITH RIGHT OF SURVIVORSHIP

AND POD (PAY ON DEATH) DESIGNATION

[Name One or More Beneficiaries]:

.....

At death of last surviving party, ownership passes to POD beneficiaries and is not part of last surviving party's estate.

..... MULTIPLE-PARTY ACCOUNT WITHOUT RIGHT OF SURVIVORSHIP

At death of party, deceased party's ownership passes as part of deceased party's estate.

AGENCY (POWER OF ATTORNEY) DESIGNATION

Agents may make account transactions for parties

but have no ownership or rights at death unless
named as POD beneficiaries.

[To Add Agency Designation to Account, Name One or
More Agents]:

.....

[Select One And Initial]:

..... AGENCY DESIGNATION SURVIVES
DISABILITY OR INCAPACITY OF PARTIES

..... AGENCY DESIGNATION TERMINATES ON
DISABILITY OR INCAPACITY OF PARTIES

(2) A contract of deposit that does not contain
provisions in substantially the form provided in subsection
(1) is governed by the provisions of [sections 84 through
102] applicable to the type of account that most nearly
conforms to the depositor's intent.

NEW SECTION. Section 88. Designation of agent. (1) By
a writing signed by all parties, the parties may designate
as agent of all parties on an account a person other than a
party.

(2) Unless the terms of an agency designation provide
that the authority of the agent terminates on disability or
incapacity of a party, the agent's authority survives
disability and incapacity. The agent may act for a disabled
or incapacitated party until the authority of the agent is
terminated.

(3) Death of the sole party or last-surviving party
terminates the authority of an agent.

**NEW SECTION. Section 89. Applicability of [sections 90
through 102].** The provisions of [sections 90 through 95]
concerning beneficial ownership as between parties or as
between parties and beneficiaries apply only to
controversies between those persons and their creditors and
other successors and do not apply to the right of those
persons to payment as determined by the terms of the
account. [Sections 96 through 102] govern the liability and
setoff rights of financial institutions that make payments
pursuant to it.

NEW SECTION. Section 90. Ownership during lifetime.
(1) In this section, "net contribution" of a party means the
sum of all deposits to an account made by or for the party,
less all payments from the account made to or for the party
that have not been paid to or applied to the use of another
party and a proportionate share of any charges deducted from
the account, plus a proportionate share of any interest or
dividends earned, whether or not included in the current
balance. The term includes deposit life insurance proceeds
added to the account by reason of death of the party whose
net contribution is in question.

(2) During the lifetime of all parties, an account
belongs to the parties in proportion to the net contribution

of each to the sums on deposit unless there is clear and convincing evidence of a different intent. As between parties married to each other, in the absence of proof otherwise, the net contribution of each is presumed to be an equal amount.

(3) A beneficiary in an account having a POD designation has no right to sums on deposit during the lifetime of any party.

(4) An agent in an account with an agency designation has no beneficial right to sums on deposit.

NEW SECTION. Section 91. Rights at death. (1) Except as otherwise provided in [sections 84 through 102], on the death of a party, sums on deposit in a multiple-party account belong to the surviving party or parties. If two or more parties survive and one is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under [section 90] belongs to the surviving spouse. If two or more parties survive and none is the surviving spouse of the decedent, the amount to which the decedent, immediately before death, was beneficially entitled under [section 90] belongs to the surviving parties in equal shares and augments the proportion to which each survivor, immediately before the decedent's death, was beneficially entitled under [section 90] and the right of survivorship continues between the

surviving parties.

(2) In an account with a POD designation:

(a) on the death of one of two or more parties, the rights in sums on deposit are governed by subsection (1);

(b) on the death of the sole party or the last survivor of two or more parties, sums on deposit belong to the surviving beneficiary or beneficiaries. If two or more beneficiaries survive, sums on deposit belong to them in equal and undivided shares and there is no right of survivorship in the event of the death of a beneficiary thereafter. If no beneficiary survives, sums on deposit belong to the estate of the last-surviving party.

(3) Sums on deposit in a single-party account without a POD designation, or in a multiple-party account that, by the terms of the account, is without right of survivorship, are not affected by the death of a party, but the amount to which the decedent, immediately before death, was beneficially entitled under [section 90] is transferred as part of the decedent's estate. A POD designation in a multiple-party account without right of survivorship is ineffective. For purposes of this section, designation of an account as a tenancy in common establishes that the account is without right of survivorship.

(4) The ownership right of a surviving party or beneficiary, or of the decedent's estate, in sums on deposit

is subject to requests for payment made by a party before the party's death, whether paid by the financial institution before or after death or unpaid. The surviving party or beneficiary, or the decedent's estate, is liable to the payee of an unpaid request for payment. The liability is limited to a proportionate share of the amount transferred under this section, to the extent necessary to discharge the request for payment.

NEW SECTION. Section 92. Alteration of rights. (1) Rights at death under [section 91] are determined by the type of account at the death of a party. The type of account may be altered by written notice given by a party to the financial institution to change the type of account or to stop or vary payment under the terms of the account. The notice must be signed by a party and received by the financial institution during the party's lifetime.

(2) A right of survivorship arising from the express terms of the account, from [section 91], or from a POD designation may not be altered by will.

NEW SECTION. Section 93. Accounts and transfers nontestamentary. Except as provided in Title 72, chapter 2, part 7, or as a consequence of and to the extent directed by [section 94], a transfer resulting from the application of [section 91] is effective by reason of the terms of the account involved and [sections 84 through 102] and is not

testamentary or subject to Title 72, chapters 1 through 5.

NEW SECTION. Section 94. Rights of creditors and others. (1) If other assets of the estate are insufficient, a transfer resulting from a right of survivorship or POD designation under [sections 84 through 102] is not effective against the estate of a deceased party to the extent needed to pay claims against the estate and statutory allowances to the surviving spouse and children.

(2) A surviving party or beneficiary who receives payment from an account after the death of a party is liable to account to the personal representative of the decedent for a proportionate share of the amount received to which the decedent, immediately before death, was beneficially entitled under [section 90], to the extent necessary to discharge the claims and allowances described in subsection (1) remaining unpaid after application of the decedent's estate. A proceeding to assert the liability may not be commenced unless the personal representative has received a written demand by the surviving spouse, a creditor, a child, or a person acting for a child of the decedent. The proceeding must be commenced within 1 year after death of the decedent.

(3) A surviving party or beneficiary against whom a proceeding to account is brought may join as a party to the proceeding a surviving party or beneficiary of any other

1 account of the decedent.

2 (4) Sums recovered by the personal representative must
3 be administered as part of the decedent's estate. This
4 section does not affect the protection from claims of the
5 personal representative or estate of a deceased party
6 provided in [section 101] for a financial institution that
7 makes payment in accordance with the terms of the account.

8 NEW SECTION. Section 95. Community property and
9 tenancy by entireties. (1) A deposit of community property
10 in an account does not alter the community character of the
11 property or community rights in the property, but a right of
12 survivorship between parties married to each other that
13 arises from the express terms of the account or [section 91]
14 may not be altered by will.

15 (2) [Sections 84 through 102] do not affect the law
16 governing tenancy by the entireties.

17 NEW SECTION. Section 96. Authority of financial
18 institution. A financial institution may enter into a
19 contract of deposit for a multiple-party account to the same
20 extent it may enter into a contract of deposit for a
21 single-party account and may provide for a POD designation
22 and an agency designation in either a single-party account
23 or a multiple-party account. A financial institution need
24 not inquire as to the source of a deposit to an account or
25 as to the proposed application of a payment from an account.

1 NEW SECTION. Section 97. Payment on multiple-party
2 account. A financial institution, on request, may pay sums
3 on deposit in a multiple-party account to:

4 (1) one or more of the parties, whether or not another
5 party is disabled, incapacitated, or deceased when payment
6 is requested and whether or not the party making the request
7 survives another party; or

8 (2) the personal representative, if any, or, if there
9 is none, the heirs or devisees of a deceased party if proof
10 of death is presented to the financial institution, showing
11 that the deceased party was the survivor of all other
12 persons named on the account as either a party or
13 beneficiary, unless the account is without right of
14 survivorship under [section 91].

15 NEW SECTION. Section 98. Payment on POD designation. A
16 financial institution, on request, may pay sums on deposit
17 in an account with a POD designation to:

18 (1) one or more of the parties, whether or not another
19 party is disabled, incapacitated, or deceased when the
20 payment is requested and whether or not a party survives
21 another party;

22 (2) the beneficiary or beneficiaries, if proof of death
23 is presented to the financial institution, showing that the
24 beneficiary or beneficiaries survived all persons named as
25 parties; or

(3) the personal representative, if any, or, if there is none, the heirs or devisees of a deceased party, if proof of death is presented to the financial institution, showing that the deceased party was the survivor of all other persons named on the account as either a party or beneficiary.

NEW SECTION. Section 99. Payment to designated agent.

A financial institution, on request of an agent under an agency designation for an account, may pay to the agent sums on deposit in the account, whether or not a party is disabled, incapacitated, or deceased when the request is made or received and whether or not the authority of the agent terminates on the disability or incapacity of a party.

NEW SECTION. Section 100. Payment to minor. If a

financial institution is required or permitted to make payment pursuant to [sections 84 through 102] to a minor designated as a beneficiary, payment may be made pursuant to the Montana Uniform Transfers to Minors Act, Title 72, chapter 26.

NEW SECTION. Section 101. Discharge. (1) Payment made

pursuant to [sections 84 through 102] in accordance with the type of account discharges the financial institution from all claims for amounts so paid, whether or not the payment is consistent with the beneficial ownership of the account as between parties, beneficiaries, or their successors.

Payment may be made whether or not a party, beneficiary, or agent is disabled, incapacitated, or deceased when payment is requested, received, or made.

(2) Protection under this section does not extend to payments made after a financial institution has received written notice from a party, or from the personal representative, surviving spouse, or heir or devisee of a deceased party, to the effect that payments in accordance with the terms of the account, including one having an agency designation, should not be permitted and after the financial institution has had a reasonable opportunity to act on the notice when the payment is made. Unless the notice is withdrawn by the person giving it, the successor of any deceased party shall concur in a request for payment if the financial institution is to be protected under this section. Unless a financial institution has been served with process in an action or proceeding, no other notice or other information shown to have been available to the financial institution affects its right to protection under this section.

(3) A financial institution that receives written notice pursuant to this section or otherwise has reason to believe that a dispute exists as to the rights of the parties may refuse, without liability, to make payments in accordance with the terms of the account.

(4) Protection of a financial institution under this section does not affect the rights of parties in disputes between themselves or their successors concerning the beneficial ownership of sums on deposit in accounts or payments made from accounts.

NEW SECTION. Section 102. Setoff. Without qualifying any other statutory right to setoff or lien and subject to any contractual provision, if a party is indebted to a financial institution, the financial institution has a right to setoff against the account. The amount of the account subject to setoff is either the proportion to which the party is, or immediately before death was, beneficially entitled under [section 90] or, in the absence of proof of that proportion, an equal share with all parties.

NEW SECTION. Section 103. Definitions. As used in [sections 103 through 112], the following definitions apply:

(1) "Beneficiary form" means a registration of a security that indicates the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner.

(2) "Register", including its derivatives, means to issue a certificate showing the ownership of a certificated security or, in the case of an uncertificated security, to initiate or transfer an account showing ownership of

securities.

(3) "Registering entity" means a person who originates or transfers a security title by registration and includes a broker maintaining security accounts for customers and a transfer agent or other person acting for or as an issuer of securities.

(4) "Security" means a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer and includes a certificated security, an uncertificated security, and a security account.

(5) "Security account" means:

(a) a reinvestment account associated with a security, a securities account with a broker, a cash balance in a brokerage account, cash, interest, earnings, or dividends earned or declared on a security in an account, a reinvestment account, or a brokerage account, whether or not credited to the account before the owner's death; or

(b) a cash balance or other property held for or due to the owner of a security as a replacement for or product of an account security, whether or not credited to the account before the owner's death.

NEW SECTION. Section 104. Registration in beneficiary form -- sole or joint tenancy ownership. Only individuals whose registration of a security shows sole ownership by one

individual or multiple ownership by two or more with right of survivorship, rather than as tenants in common, may obtain registration in beneficiary form. Multiple owners of a security registered in beneficiary form hold as joint tenants with right of survivorship, as tenants by the entirety, or as owners of community property held in survivorship form and not as tenants in common.

NEW SECTION. Section 105. Registration in beneficiary form -- applicable law. (1) A security may be registered in beneficiary form if the form is authorized by this or a similar statute of the state:

(a) of organization of the issuer or registering entity;

(b) of the location of the registering entity's principal office;

(c) of the office of its transfer agent or its office making the registration; or

(d) listed as the owner's address at the time of registration.

(2) A registration governed by the law of a jurisdiction in which this or similar legislation is not in force or was not in force when a registration in beneficiary form was made is nevertheless presumed to be valid and authorized as a matter of contract law.

NEW SECTION. Section 106. Origination of registration

in beneficiary form. A security, whether evidenced by certificate or account, is registered in beneficiary form when the registration includes a designation of a beneficiary to take the ownership at the death of the owner or the deaths of all multiple owners.

NEW SECTION. Section 107. Form of registration in beneficiary form. Registration in beneficiary form may be shown by the words "transfer on death" or the abbreviation "TOD", or by the words "pay on death" or the abbreviation "POD", after the name of the registered owner and before the name of a beneficiary.

NEW SECTION. Section 108. Effect of registration in beneficiary form. The designation of a TOD beneficiary on a registration in beneficiary form has no effect on ownership until the owner's death. A registration of a security in beneficiary form may be canceled or changed at any time by the sole owner or all then-surviving owners without the consent of the beneficiary.

NEW SECTION. Section 109. Ownership on death of owner. On the death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners. On proof of the death of all owners and compliance with any applicable requirements of the registering entity, a security registered in beneficiary

form may be reregistered in the name of the beneficiary or beneficiaries who survived the death of all owners. Until division of the security after the death of all owners, multiple beneficiaries surviving the death of all owners hold their interests as tenants in common. If no beneficiary survives the death of all owners, the security belongs to the estate of the deceased sole owner or the estate of the last to die of all multiple owners.

NEW SECTION. Section 110. Protection of registering entity. (1) A registering entity is not required to offer or to accept a request for security registration in beneficiary form. If a registration in beneficiary form is offered by a registering entity, the owner requesting registration in beneficiary form assents to the protections given to the registering entity by [sections 103 through 112].

(2) By accepting a request for registration of a security in beneficiary form, the registering entity agrees that the registration will be implemented on the death of the deceased owner as provided in [sections 103 through 112].

(3) (a) A registering entity is discharged from all claims to a security by the estate, creditors, heirs, or devisees of a deceased owner if it registers a transfer of the security in accordance with [section 109] and does so in good faith reliance on:

(i) the registration;
(ii) [sections 103 through 112]; and
(iii) information provided to it by affidavit of the personal representative of the deceased owner, or by the surviving beneficiary or by the surviving beneficiary's representatives, or other information available to the registering entity.

(b) The protections of [sections 103 through 112] do not extend to a reregistration or payment made after a registering entity has received written notice from any claimant to any interest in the security objecting to implementation of a registration in beneficiary form. No other notice or other information available to the registering entity affects its right to protection under [sections 103 through 112].

(4) The protection provided by [sections 103 through 112] to the registering entity of a security does not affect the rights of beneficiaries in disputes between themselves and other claimants to ownership of the security transferred or its value or proceeds.

NEW SECTION. Section 111. Nontestamentary transfer on death. (1) A transfer on death, resulting from a registration in beneficiary form, is effective by reason of the contract regarding the registration between the owner and the registering entity and [sections 103 through 112]

and is not testamentary.

(2) [Sections 103 through 112] do not limit the rights of creditors of security owners against beneficiaries and other transferees under other laws of this state.

NEW SECTION. Section 112. Terms, conditions, and forms for registration. (1) (a) A registering entity offering to accept registrations in beneficiary form may establish the terms and conditions under which it will receive requests for:

(i) registrations in beneficiary form; and

(ii) implementation of registrations in beneficiary form, including requests for cancellation of previously registered TOD beneficiary designations and requests for reregistration to effect a change of beneficiary.

(b) The terms and conditions so established may provide for proving death, avoiding or resolving any problems concerning fractional shares, designating primary and contingent beneficiaries, and substituting a named beneficiary's descendants to take in the place of the named beneficiary in the event of the beneficiary's death. Substitution may be indicated by appending to the name of the primary beneficiary the letters LDPS, standing for "lineal descendants per stirpes". This designation substitutes a deceased beneficiary's descendants who survive the owner for a beneficiary who fails to so survive, the

descendants to be identified and to share in accordance with the law of the beneficiary's domicile at the owner's death that governs inheritance by descendants of an intestate. Other forms of identifying beneficiaries who are to take on one or more contingencies, and rules for providing proofs and assurances needed to satisfy reasonable concerns by registering entities regarding conditions and identities relevant to accurate implementation of registrations in beneficiary form, may be contained in a registering entity's terms and conditions.

(2) The following are illustrations of registrations in beneficiary form that a registering entity may authorize:

(a) sole owner-sole beneficiary: John S. Brown TOD (or POD) John S. Brown Jr.;

(b) multiple owners-sole beneficiary: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr.;

(c) multiple owners-primary and secondary (substituted) beneficiaries: John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. SUB BENE Peter Q. Brown or John S. Brown Mary B. Brown JT TEN TOD John S. Brown Jr. LDPS.

Section 113. Section 72-31-201, MCA, is amended to read:

"72-31-201. Statutory short form of general power of attorney ---format-requirements---joint-agents. (1) The use of the following statutory form, or a form substantially

1 similar--to--the--following--form,--in--the--creation of a power
2 of attorney is lawful,--and--when--used,--the--form--must--be
3 construed--in--accordance--with--the--provisions--of--this--part
4 legally sufficient:

5 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD
6 AND SWEEPING. THEY ARE DEFINED EXPLAINED IN 72-31-202
7 THROUGH 72-31-216 THIS PART. IF YOU HAVE ANY QUESTIONS ABOUT
8 THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. ~~THE USE OF ANY~~
9 ~~OTHER OR DIFFERENT FORM OF POWER OF ATTORNEY DESIRED BY THE~~
10 ~~PARTIES--IS ALSO PERMITTED. THIS DOCUMENT DOES NOT AUTHORIZE~~
11 ~~ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR~~
12 ~~YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY MAY BE REVOKED BY~~
13 ~~YOU IF YOU LATER WISH TO DO SO. THIS POWER OF ATTORNEY~~
14 ~~AUTHORIZES BUT DOES NOT REQUIRE THE ATTORNEY IN FACT TO ACT~~
15 ~~FOR YOU.~~

16 Know--all--by--these--presents,--which--are--intended to
17 constitute a STATUTORY SHORT FORM POWER OF ATTORNEY pursuant
18 to this section:

19 That I (insert your name and
20 address of---the---principal) do---hereby appoint
21 (insert the name and address of the
22 attorney-in-fact--or--each--attorney-in-fact-if-more-than-one
23 is-designated person appointed) as my attorney(s)--in-fact
24 agent (attorney-in-fact) to act (jointly) for me in any
25 lawful way with respect to the following initialed subjects:

1 (NOTE: If more than one attorney in fact--is--designated
2 and--the--principal wishes each attorney in fact alone to be
3 able to--exercise--the--power--conferred,--delete--the--word
4 "jointly". Failure to delete the word "jointly" will require
5 the attorneys in fact to act unanimously.)

6 First:--in--my--name, place, and--stead in any way that I
7 myself could do, if I were personally present, with--respect
8 to--the--following--matters--as--each--of--them--is--defined--in
9 72-31-202 through 72-31-216:

10 (To grant to the attorney in fact any of--the--following
11 powers,--make--a--check--or--"X"--in the line in front of each
12 power being granted. To delete any of the following powers,
13 do--not--make--a--check--or--"X"--in the line in front of the
14 power. You may, but need not, cross--out--each--power--being
15 deleted--with--a--line--drawn--through--it--(or--in--similar
16 fashion). Failure to make--a--check--or--"X"--in the line in
17 front of the power will have--the--effect--of--deleting--the
18 power--unless--the--line--in--front--of--the--power--of--(0)--is
19 checked or X-ed.)

20 Check or "X"

21 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE
22 IN FRONT OF (N) AND IGNORE THE LINES IN FRONT OF THE OTHER
23 POWERS.

24 TO GRANT ONE OR MORE, BUT FEWER THAN ALL, OF THE
25 FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF EACH POWER

1 YOU ARE GRANTING.

2 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF
 3 IT. YOU MAY, BUT NEED NOT, CROSS OUT EACH POWER WITHHELD.

4 INITIAL

5 (A) real property transactions;
 6 (B) tangible personal property transactions;
 7 (C) stock and bond, ~~share~~, ~~and~~ ~~commodity~~
 8 transactions;
 9 (D) commodity and option transactions;
 10 ~~(B)~~ (E) banking and other financial institution
 11 transactions;
 12 ~~(E)~~ (F) business operating transactions;
 13 ~~(F)~~ (G) insurance and annuity transactions;
 14 ~~(G)~~ (H) estate, trust, and other beneficiary
 15 transactions;
 16 ~~..... (H) --gift-transactions;~~
 17 ~~..... (I) --fiduciary-transactions;~~
 18 ~~(J)~~ (I) claims and litigation;
 19 ~~(K)~~ (J) personal and family maintenance;
 20 ~~(L)~~ (K) benefits from social security, medicare,
 21 medicaid, or other governmental programs or from military
 22 service;
 23 ~~..... (M) --records, reports, and statements;~~
 24 (L) retirement plan transactions;
 25 ~~(N)~~ (M) all other tax matters;

1 ~~(O)~~ (N) all of the powers listed in (A) through
 2 ALL OF THE POWERS LISTED ABOVE. YOU NEED NOT INITIAL ANY
 3 OTHER LINES IF YOU INITIAL LINE (N).

4 Second:--(You--must--indicate--below--whether--or--not--this
 5 power--of--attorney--will--be--effective---if---you---become
 6 incompetent--Make-a-check-or-"X"--in-the-line-in-front-of-the
 7 statement-that-expresses-your-intent--)

8 SPECIAL INSTRUCTIONS:

9 ON THE FOLLOWING LINES, YOU MAY GIVE SPECIAL INSTRUCTIONS
 10 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

11
 12
 13
 14
 15
 16
 17

18 UNLESS YOU DIRECT OTHERWISE ABOVE, THIS POWER OF
 19 ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT
 20 IS REVOKED.

21 This power of attorney revokes all previous powers of
 22 attorney signed by me.

23 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS
 24 POWER OF ATTORNEY TO REVOKE ALL PREVIOUS POWERS OF ATTORNEY
 25 SIGNED BY YOU.

1 IF YOU DO WANT THIS POWER OF ATTORNEY TO REVOKE ALL
 2 PREVIOUS POWERS OF ATTORNEY SIGNED BY YOU, YOU SHOULD READ
 3 THOSE POWERS OF ATTORNEY AND SATISFY THEIR PROVISIONS
 4 CONCERNING REVOCATION. THIRD PARTIES WHO RECEIVED COPIES OF
 5 THOSE POWERS OF ATTORNEY SHOULD BE NOTIFIED.

6 This power of Attorney ~~shall~~ will continue to be
 7 effective if I become disabled, incapacitated, or
 8 incompetent. It shall not be affected by my later disability
 9 or incompetency.

10 ~~-----This power of attorney shall not be effective---if~~
 11 ~~I become incompetent.~~

12 ~~Third:--(You--must--indicate--below--whether--or--not--this~~
 13 ~~power--of--attorney--authorizes--the---attorney-in-fact---to~~
 14 ~~transfer--your--property--directly--to--the--attorney-in-fact.~~
 15 ~~Make-a-check-or-"X"-in-the-line-in-front--of--the--statement~~
 16 ~~that-expresses-your-intent.)~~

17 ~~-----This---power---of---attorney---authorizes---the~~
 18 ~~attorney-in-fact-to-receive-the-transfer-directly.~~

19 ~~-----This power of attorney--does--not--authorize--the~~
 20 ~~attorney-in-fact-to-receive-the-transfer-directly.~~

21 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT THIS
 22 POWER OF ATTORNEY TO CONTINUE IF YOU BECOME DISABLED,
 23 INCAPACITATED, OR INCOMPETENT.

24 If it becomes necessary to appoint a conservator of my
 25 estate or guardian of my person, I nominate my agent.

1 STRIKE THE PRECEDING SENTENCE IF YOU DO NOT WANT TO
 2 NOMINATE YOUR AGENT AS CONSERVATOR OR GUARDIAN.

3 If any agent named by me dies, becomes incompetent,
 4 resigns or refuses to accept the office of agent, I name the
 5 following (each to act alone and successively, in the order
 6 named) as successor(s) to the agent:

7 1.

8 2.

9 3.

10 For purposes of this subsection, a person is considered
 11 to be incompetent if and while: (1) the person is a minor;
 12 (2) the person is an adjudicated incompetent or disabled
 13 person; (3) a conservator has been appointed to act for the
 14 person; (4) a guardian has been appointed to act for the
 15 person; or (5) the person is unable to give prompt and
 16 intelligent consideration to business matters as certified
 17 by a licensed physician.

18 I agree that any third party who receives a copy of this
 19 document may act under it. I may revoke this power of
 20 attorney by a written document that expressly indicates my
 21 intent to revoke. Revocation of the power of attorney is not
 22 effective as to a third party until the third party learns
 23 of the revocation. I agree to indemnify the third party for
 24 any claims that arise against the third party because of
 25 reliance on this power of attorney.

1 In--witness--whereof-i-have-hereunto-signed-my-name-this
 2 -----day-of-----19--
 3 -----
 4 {Signature-of-Principal}
 5 {Acknowledgment}
 6 Specimen-Signature-of-Attorney(s)-in-Fact
 7 -----
 8 -----
 9 Signed this day of, 19..
 10 -----
 11 {Your Signature}
 12 -----
 13 {Your Social Security Number}
 14 State of
 15 {County} of
 16 This document was acknowledged before me on
 17 {Date} by.....
 18 {Name of Principal}
 19
 20 {Signature of Notarial Officer}
 21
 22 {Seal, if any} {Title (and Rank)}
 23 {My commission expires:.....}
 24 BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, THE AGENT
 25 ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN

1 AGENT.
 2 {2} Any--of--the--powers--of-the-form-in-subsection-{1}
 3 that-are-not-checked-or-X-ed-are-withheld-by--the--principal
 4 from--the--attorney-in-fact--unless--the-power-of-{0}-on-the
 5 form-in-subsection-{1}-is-checked-or-X-ed--The--withholding
 6 by--the--principal--from--the-attorney-in-fact-of-any-of-the
 7 powers-of-{A}-through-{M},--in-addition-to-the-withholding-of
 8 the--power--of--{0},--on--the--form--in--subsection---{1}
 9 automatically-constitutes-withholding-of-the-powers-of-{N},
 10 {3}--To--constitute--a--" A statutory short-form power of
 11 attorney",--as-this-phrase-is-used-in is legally sufficient
 12 under this part, if the wording and content of the form in
 13 subsection-{1}-must-be-duplicated-on--a--form substantially
 14 complies with similar--to--the-form-provided-in subsection
 15 (1), the notices-must-appear--in--a--conspicuous--place--and
 16 manner,--the-second-and-third-parts-must-be form is properly
 17 completed, and the signature of the principal must--be is
 18 acknowledged.
 19 {4}--All---powers---enumerated---in---72-31-202--through
 20 72-31-216-may-be-legally-performed-by--an--attorney-in-fact
 21 acting-on-behalf-of-a-principal.
 22 {3} If the line in front of (N) of the form under
 23 subsection (1) is initialed, an initial on the line in front
 24 of any other power does not limit the powers granted by line
 25 (N)."

NEW SECTION. Section 114. Durable power of attorney. A power of attorney legally sufficient under this part is durable to the extent that durable powers are permitted by other law of this state and the power of attorney contains language, such as "This power of attorney will continue to be effective if I become disabled, incapacitated, or incompetent." showing the intent of the principal that the power granted may be exercised notwithstanding later disability, incapacity, or incompetency.

NEW SECTION. Section 115. Construction of powers generally. By executing a statutory power of attorney with respect to a subject listed in 72-31-201(1), the principal, except as limited or extended by the principal in the power of attorney, empowers the agent for that subject to:

(1) demand, receive, and obtain, by litigation or otherwise, money or other thing of value to which the principal is, may become, or claims to be entitled and conserve, invest, disburse, or use anything so received for the purposes intended;

(2) contract in any manner with any person, on terms agreeable to the agent, to accomplish a purpose of a transaction and perform, rescind, reform, release, or modify the contract or another contract made by or on behalf of the principal;

(3) execute, acknowledge, seal, and deliver a deed,

revocation, mortgage, lease, notice, check, release, or other instrument the agent considers desirable to accomplish a purpose of a transaction;

(4) prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to a claim existing in favor of or against the principal or intervene in litigation relating to the claim;

(5) seek on the principal's behalf the assistance of a court to carry out an act authorized by the power of attorney;

(6) engage, compensate, and discharge an attorney, accountant, expert witness, or other assistant;

(7) keep appropriate records of each transaction, including an accounting of receipts and disbursements;

(8) prepare, execute, and file a record, report, or other document the agent considers desirable to safeguard or promote the principal's interest under a statute or governmental regulation;

(9) reimburse the agent for expenditures properly made by the agent in exercising the powers granted by the power of attorney; and

(10) in general, do any other lawful act with respect to the subject.

Section 116. Section 72-31-202, MCA, is amended to read:

"72-31-202. Real Construction of power relating to real property transactions. ~~{i}~~ In a statutory short-form power of attorney, the language conferring granting general authority power with respect to real property transactions means that the principal authorizes the attorney-in-fact empowers the agent to:

~~{a}~~(1) to accept as a gift or as security for a loan, or to reject, demand, buy, lease, receive, or otherwise acquire either ownership or possession of any estate or an interest in real property or a right incident to real property;

~~{b}~~(2) to sell, exchange, or convey, either with or without covenants; quitclaim; release; surrender; mortgage; encumber; partition; or consent to the partitioning; subdivide; apply for zoning, rezoning, or other governmental permits; plat or consent to platting; develop; grant options concerning; lease; or sublet; or otherwise dispose of any estate or an interest in real property or a right incident to real property;

~~{c}~~(3) to release in whole or in part, assign the whole or a part of, satisfy in whole or in part, and enforce, by action, proceeding, litigation or otherwise, any a mortgage, deed of trust, encumbrance, lien, or other claim to real property that exists or is claimed to exist in favor of the principal asserted;

~~{d}~~(4) to do any act of management or of conservation with respect to any estate or an interest in real property or a right incident to real property, owned or claimed to be owned by the principal, including by way of illustration but not of restriction, power to:

(a) insure insuring against any a casualty, liability, or loss;

(b) to obtain or regain obtaining or regaining possession or protect protecting the estate or interest or right, by action, proceeding, litigation or otherwise;

(c) to pay, compromise, or contest paying, compromising, or contesting taxes or assessments; to apply, or applying for and receive receiving refunds in connection with taxes or assessments them; and

(d) to purchase purchasing supplies, hire hiring assistance or labor, and make making repairs or alterations in the structures or lands real property;

~~{e}~~(5) to use in any way, develop, modify, alter, replace, remove, erect, or install structures or other improvements upon any real property in or incident to which the principal has or claims to have any estate or an interest or right;

~~{f}~~(6) to demand, receive, or obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be

entitled--as-the-proceeds-of-an-interest-in-real-property-or
of-one-or--more--of--the--transactions--enumerated--in--this
section--to-serve--invest--disburse--or-utilize--anything
received-for-purposes-enumerated-in--this--section--and--to
reimburse-the-attorney-in-fact-for-any-expenditures-properly
made--by-the-attorney-in-fact-in-the-execution-of-the-powers
conferred-on-the-attorney-in-fact--by--the--statutory--short
form-power-of-attorney;

{g}--to participate in any a reorganization with respect
to real property or a legal entity that owns an interest in
or right incident to real property and receive and hold any
shares of stock or instrument--of--similar--character
obligations received in accordance--with a plan of
reorganization and to act with respect to the-shares them,
including--by-way-of-illustration-but--not--of--restriction;
power;

(a) to--sell selling or to otherwise dispose disposing
of the-shares them;

(b) to-exercise exercising or sell--any selling an
option, conversion, or similar right with respect to the
shares, them; and

(c) to-vote-on-the-shares voting them in person or by
the-granting-of-a proxy;

{h}--to--agree--and--contract--in--any-manner--with-any
person--and-on--any--terms--that--the--attorney-in-fact--may

select--for--the--accomplishment--of--any--of--the-purposes
enumerated-in-this-section-and-to-perform--rescind--reform--
release--or--modify--an--agreement--contract--or-any-other
similar-agreement-or-contract-made-by-or-on--behalf--of--the
principal;

{i}--to--execute--acknowledge--seal--and--deliver-any
deed--revocation--mortgage--lease--notice--check--or--other
instrument--that--the--attorney-in-fact-considers-useful-for
the-accomplishment-of-any-of-the-purposes-enumerated-in-this
section;

{j}--to--prosecute--defend--submit--to--arbitration--
settle--and--propose-or-accept-a-compromise-with-respect-to
any-claim-existing-in-favor--of--or--against--the--principal
based--on--or--involving--any--real-estate-transaction-or-to
intervene-in-any-action-or-proceeding-relating-to-the-claim;

{k}--to-hire--discharge--and--compensate--any--attorney--
accountant--expert--witness--or--other--assistant-when-the
attorney-in-fact-considers-that-action-to-be--desirable--for
the--proper-execution-of-any-of-the-powers-described-in-this
section-and-for-the-keeping-of-needed-records--and

{l}--in-general-and-in-addition-to-all-the-specific-acts
in-this-section--to-do-any-other-act--with--respect--to--any
estate-or

(7) change the form of title of an interest in or right
incident to real property;

1 {8} dedicate to public use, with or without
 2 consideration, easements or other real property in which the
 3 principal has or claims to have an interest.

4 ~~{2}--All---powers---described---in---this---section---are~~
 5 ~~exercisable equally with respect to any estate or interest~~
 6 ~~in real property owned by the principal at the giving of the~~
 7 ~~power of attorney or acquired after that time, whether~~
 8 ~~located in Montana or elsewhere."~~

9 **Section 117.** Section 72-31-203, MCA, is amended to
 10 read:

11 "72-31-203. Tangible Construction of power relating to
 12 tangible personal property transactions. {1} In a statutory
 13 short-form power of attorney, the language conferring
 14 general authority granting power with respect to tangible
 15 personal property transactions means that the principal
 16 authorizes the attorney-in-fact empowers the agent to:

17 {a}{1} to accept as a gift or as security for a loan,
 18 or to reject, demand, buy, receive, or otherwise acquire
 19 either ownership or possession of any tangible personal
 20 property or any an interest in tangible personal property;

21 {b}{2} to sell, exchange, convey either with or without
 22 covenants, release, surrender, mortgage, encumber, pledge,
 23 hypothecate, create a security interest in, pawn, grant
 24 options concerning, lease, or sublet sublease to others, or
 25 otherwise dispose of any tangible personal property or any

1 an interest in any tangible personal property;

2 ~~{c}{3} to release in-whole-or-in-part, assign the-whole~~
 3 ~~or--a--part-of, satisfy in-whole-or-in-part, and or enforce,~~
 4 ~~by action, proceeding, litigation or otherwise, any a~~
 5 ~~mortgage, security interest, encumbrance, lien, or other~~
 6 ~~claim that exists or is claimed to exist in favor on behalf~~
 7 ~~of the principal with respect to any tangible personal~~
 8 ~~property or any an interest in tangible personal property;~~
 9 ~~and~~

10 ~~{d}{4} to do any an act of management or of~~
 11 ~~conservation with respect to any tangible personal property~~
 12 ~~or to any an interest in any tangible personal property~~
 13 ~~owned--or--claimed--to--be--owned--by on behalf of the principal,~~
 14 ~~including, by way of illustration but not of restriction,~~
 15 ~~power;~~

16 (a) to insure insuring against any casualty, liability,
 17 or loss;

18 (b) to obtain obtaining or regain regaining possession
 19 or protect protecting the tangible--personal property or
 20 interest, in any--tangible--personal--property by action,
 21 proceeding, litigation or otherwise;

22 (c) to pay, compromise, paying, compromising or contest
 23 contesting taxes or assessments; and to apply or applying
 24 for and receive receiving refunds in connection with taxes
 25 or assessments;

1 (d) move moving from place to place;

2 (e) store storing for hire or on a gratuitous

3 bailment; and

4 (f) use, alter, using, altering, and make making

5 repairs or alterations of any tangible personal property or

6 interest in any tangible personal property;

7 (g) to demand, receive, or obtain by action,

8 proceeding, or otherwise any money or other thing of value

9 to which the principal is, may become, or may claim to be

10 entitled as the proceeds of any tangible personal property

11 or of any interest in any tangible personal property or of

12 one or more of the transactions enumerated in this section;

13 to conserve, invest, disburse, or utilize anything received

14 for purposes enumerated in this section; and to reimburse

15 the attorney in fact for any expenditures properly made by

16 the attorney in fact in the execution of the powers

17 conferred on the attorney in fact by the statutory short

18 form power of attorney;

19 (h) to agree and contract, in any manner, with any

20 person, and on any terms that the attorney in fact may

21 select, for the accomplishment of any of the purposes

22 enumerated in this section and to perform, rescind, reform,

23 release, or modify any agreement or contract or any other

24 similar agreement or contract made by or on behalf of the

25 principal;

1 (i) to execute, acknowledge, seal, and deliver any

2 conveyance, mortgage, lease, notice, check, or other

3 instrument that the attorney in fact considers useful for

4 the accomplishment of any of the purposes enumerated in this

5 section;

6 (j) to prosecute, defend, submit to arbitration,

7 settle, and propose or accept a compromise with respect to

8 any claim existing in favor of or against the principal

9 based on or involving any tangible personal property

10 transaction or to intervene in any action or proceeding

11 relating to a claim;

12 (k) to hire, discharge, and compensate any attorney,

13 accountant, expert, witness, or other assistant when the

14 attorney in fact considers that action to be desirable for

15 the proper execution by the attorney in fact of any of the

16 powers described in this section and for the keeping of

17 needed records; and

18 (l) in general and in addition to all the specific acts

19 listed in this section, to do any other acts with respect to

20 any tangible personal property or interest in any tangible

21 personal property;

22 (m) All powers described in this section are

23 exercisable equally with respect to any tangible personal

24 property or interest in any tangible personal property owned

25 by the principal at the giving of the power of attorney or

1 acquired--after--that--time,--whether--located-in-Montana-or
2 elsewhere."

3 **Section 118.** Section 72-31-204, MCA, is amended to
4 read:

5 "72-31-204. Bond, share, and commodity Construction of
6 power relating to stock and bond transactions. {i} In a
7 statutory short-form power of attorney, the language
8 conferring--general-authority granting power with respect to
9 stock and bond, share, and commodity transactions means that
10 the principal authorizes the attorney-in-fact:

11 {a}--to accept as a gift or as security for a loan or to
12 reject, demand, empowers the agent to buy, receive, or
13 otherwise--acquire--either--ownership--or--possession--of--any
14 bond, share, instrument--of--similar--character, commodity
15 interest, or any instrument with respect to the bond, share,
16 or--interest, together--with--the--interest, dividends,
17 proceeds, or other distributions connected with any of those
18 instruments;

19 {b}--to sell, or sell short and to exchange, transfer
20 either--with--or--without--a--guaranty, release, surrender,
21 hypothecate, pledge, grant options concerning loan, trade
22 in, or otherwise to dispose of any bond, share, instrument
23 of similar character, stocks, bonds, mutual funds, and all
24 other types of securities and financial instruments except
25 commodity interest, or any instrument with respect to the

1 bond, share, or interest, futures contracts; call and put
2 options on stocks and stock indexes; receive certificates
3 and other evidences of ownership with respect to securities;
4 exercise voting rights with respect to securities in person
5 or by proxy; enter into voting trusts; and consent to
6 limitations on the right to vote.

7 {c}--to release in whole or in part, assign the whole or
8 a part of, satisfy in whole or in part, and enforce by
9 action, proceeding, or otherwise--any--pledge, encumbrance,
10 lien, or other claim as to any bond, share, instrument of
11 similar character, commodity interest, or any interest with
12 respect to the bond, share, or interest when the pledge,
13 encumbrance, lien, or other claim is owned or claimed to be
14 owned by the principal;

15 {d}--to do any act of management or of conservation with
16 respect to any bond, share, instrument of similar character,
17 commodity interest, or any instrument with respect to the
18 interest owned or claimed to be owned by the principal or in
19 which the principal has or claims to have an interest,
20 including, by way of illustration but not of restriction,
21 power to insure against any casualty, liability, or loss, to
22 obtain or regain possession or protect the principal's
23 interest by action, proceeding, or otherwise; to pay,
24 compromise, or contest taxes or assessments; to apply for
25 and receive refunds in connection with taxes or assessments;

1 to--consent--to--and--participate--in--any---reorganization,
 2 recapitalization,--liquidation,--merger,--consolidation,--sale,
 3 lease,--or--other--change--in--or--revival--of--a--corporation--or
 4 other---association,--in--the--financial--structure--of--any
 5 corporation--or--other--association,--or--in--the--priorities,
 6 voting--rights,--or--other--special--rights--with--respect--to--the
 7 corporation--or--association,--to--become--a--depositor--with--any
 8 protective,--reorganization,--or--similar--committee--of--the
 9 bond,--share,--other--instrument---of---similar---character,
 10 commodity--interest,--or--any--instrument--with--respect--to--the
 11 bond,--share,--or--interest--belonging--to--the--principal,--to--make
 12 any--payments--reasonably--incident--to--the--foregoing,--to
 13 exercise--or--sell--any--option,--conversion,--or--similar--right,
 14 to--vote--in--person--or--by--the--granting--of--a--proxy--with--or
 15 without--the--power--of--substitution,--either--discretionary,
 16 general,--or--otherwise,--for--the--accomplishment--of--any--of--the
 17 purposes--enumerated--in--this--section;
 18 (e)--to--carry--in--the--name--of--a--nominee--selected--by--the
 19 attorney--in--fact--any--evidence--of--the--ownership--of--any--bond,
 20 share,--other--instrument--of--similar--character,--commodity
 21 interest,--or--instrument--with--respect--to--the--bond,--share,--or
 22 interest,--belonging--to--the--principal;
 23 (f)--to--employ,--in--any--way--believed--to--be--desirable--by
 24 the--attorney--in--fact,--any--bond,--share,--other--instrument--of
 25 similar--character,--commodity--interest,--or--any--instrument

1 with--respect--to--the--bond,--share,--or--interest--in--which--the
 2 principal--has--or--claims--to--have--any--interest--for--the
 3 protection--or--continued--operation--of--any--speculative--or
 4 margin---transaction---personally---begun---or---personally
 5 guaranteed,--in--whole--or--in--part,--by--the--principal;
 6 (g)--to--demand,--receive,--or--obtain--by--action,
 7 proceeding,--or--otherwise--any--money--or--other--thing--of--value
 8 to--which--the--principal--is,--may--become,--or--may--claim--to--be
 9 entitled--as--the--proceeds--of--any--interest--in--a--bond,--share,
 10 other--instrument--of--similar--character,--commodity--interest,
 11 or--any--instrument--with--respect--to--the--bond,--share,--interest,
 12 or--of--one--or--more--of--the--transactions--enumerated--in--this
 13 section,--to--conserve,--invest,--disburse,--or--utilize--anything
 14 received--for--purposes--enumerated--in--this--section,--and--to
 15 reimburse--the--attorney--in--fact--for--any--expenditures--properly
 16 made--by--the--attorney--in--fact--in--the--execution--of--the--powers
 17 conferred--on--the--attorney--in--fact--by--the--statutory--short
 18 form--power--of--attorney;
 19 (h)--to--agree--and--contract,--in--any--manner,--with--any
 20 broker--or--other--person,--and--on--any--terms---that---the
 21 attorney--in--fact--selects,--for--the--accomplishment--of--any--of
 22 the--purposes--enumerated--in--this--section--and--to--perform,
 23 rescind,--reform,--release,--or--modify--the--agreement--or
 24 contract--or--any--other--similar--agreement--made--by--or--on--behalf
 25 of--the--principal;

{i}--to-execute,--acknowledge,--seal,--and--deliver--any consent,--agreement,--authorization,--assignment,--revocation, notice,--waiver-of-notice,--check,--or--other--instrument--that the-attorney-in-fact-considers-useful-for-the-accomplishment of-any-of-the-purposes-enumerated-in-this-section;

{j}--to--execute,--acknowledge,--and--file-any-report-or certificate-required-by-law-or-governmental-regulation;

{k}--to--prosecute,--defend,--submit---to---arbitration, settle,--and--propose-or-accept-a-compromise-with-respect-to any-claim-existing-in-favor--of--or--against--the--principal based---on--or--involving--any--bond,--share,--or--commodity transaction--or--to--intervene--in--any--related--action--or proceeding;

{l}--to-hire,--discharge,--and--compensate--any--attorney, accountant,--expert--witness,--or--other--assistant-when-the attorney-in-fact-considers-that-action-to-be--desirable--for the--proper-execution-of-any-of-the-powers-described-in-this section-and-for-the-keeping-of-needed-records;--and

{m}--in-general--and-in-addition-to-all-the-specific-acts listed-in-this-section,--to-do-any-other-acts-with-respect-to any-interest-in-any-bond,--share,--other-instrument-of-similar character,--commodity-interest,--or-instrument-with-respect-to a-commodity;

{2}--All-powers---described---in---this---section---are exercisable--equally--with--respect--to--any-interest-in-any

bond,--share,--instrument--of--similar--character,--commodity interest,--or-instrument-with-respect-to-a-commodity-owned-by the--principal--at--the--giving--of-the-power-of-attorney-or acquired-after-that-time,--whether--located--in--Montana--or elsewhere."

NEW SECTION. Section 119. Construction of power relating to commodity and option transactions. In a statutory power of attorney, the language granting power with respect to commodity and option transactions empowers the agent to buy, sell, exchange, assign, settle, and exercise commodity futures contracts; call and put options on stocks and stock indexes traded on a regulated option exchange; and establish, continue, modify, and terminate option accounts with a broker.

Section 120. Section 72-31-205, MCA, is amended to read:

"72-31-205. Banking Construction of power relating to banking and other financial institution transactions. {1} In a statutory short--form power of attorney, the language conferring--general-authority granting power with respect to banking and other financial institution transactions means that--the-principal-authorizes-the-attorney-in-fact empowers the agent to:

{a}{1} to continue, modify, and terminate any--deposit an account or other banking arrangement made by or on behalf

1 of the principal prior--to--the-execution-of-the-power-of
2 attorney;

3 {b}{2} to-open-in-the-name-of-the-principal-alone-or-in
4 a---way---that---clearly---evidences---the---principal---and
5 attorney-in-fact-relationship-a-deposit establish, modify,
6 and terminate an account of--any--type or other banking
7 arrangement with any a bank, trust company, savings and loan
8 association, credit union, thrift company, brokerage firm,
9 or other financial institution that-serves-as-a-depository
10 for-funds selected by the attorney-in-fact agent;

11 {3} to hire a safe deposit box or space in a vault
12 space;

13 {4} and--to--make--other-contracts-for-the-procuring-of
14 contract to procure other services made available by--the
15 banking from a financial institution as the attorney-in-fact
16 agent considers desirable;

17 {c}{5} to--make, sign, and deliver checks or drafts for
18 any-purpose-and-to withdraw by check, order, or otherwise
19 any--funds money or property of the principal deposited with
20 or left in the custody of any--banking. a financial
21 institution,--wherever--located,--either-before-or-after-the
22 execution-of-the-power-of-attorney;

23 {d}{6} to-prepare-any-necessary-financial-statements-of
24 the-assets-and-liabilities-or-income--and--expenses--of--the
25 principal-for-submission-to-any-banking-institution;

1 {e)--to receive bank statements, vouchers, notices, or
2 other and similar documents from any--banking a financial
3 institution and to act with respect to them;

4 {f}{7} to enter at-any-time-any a safe deposit box or
5 vault that-the-principal-could-enter-if--personally--present
6 and withdraw or add to the contents;

7 {g}{8} to borrow money at any an interest rate the
8 attorney-in-fact-selects agreeable to the agent and,--to
9 pledge as security any--assets personal property of the
10 principal the--attorney-in-fact--considers---desirable---or
11 necessary for--borrowing,--and--to in order to borrow, pay,
12 renew, or extend the time of payment of any a debt of the
13 principal;

14 {h}{9} to make, assign, draw, endorse, discount,
15 guarantee, and negotiate all promissory notes, bills--of
16 exchange, checks, drafts, or and other negotiable or
17 nonnegotiable paper of the principal or payable to the
18 principal or the principal's order; to receive the cash or
19 other proceeds of any-of those transactions; and to accept
20 any--bill--of-exchange-or a draft drawn by any a person upon
21 the principal and pay it when due;

22 {i}{10} to receive for the principal and to-deal-in--and
23 to--deal-with-any act upon a sight draft, warehouse receipt,
24 or other negotiable or nonnegotiable instrument in-which-the
25 principal-has-or-claims-to-have-an-interest;

{j}{(11)} to apply for and to receive letters of credit, credit cards, and traveler's checks from any banking a financial institution selected by the attorney in fact, giving and give an indemnity or other agreement in connection with the letters of credit that the attorney in fact considers desirable or necessary; and

{k}{(12)} to consent to an extension in of the time of payment with respect to any commercial paper or any banking a financial transaction in which the principal has an interest or by which the principal is or might be affected in any way, with a financial institution.

{i} to demand, receive, obtain by action, proceeding, or otherwise any money or other thing of value to which the principal is, may become, or may claim to be entitled as the proceeds of any banking transaction and to reimburse the attorney in fact for any expenditures properly made in the execution of the powers conferred upon the attorney in fact by the statutory short form power of attorney;

{m} to execute, acknowledge, and deliver any instrument of any kind, in the name of the principal or otherwise, that the attorney in fact considers useful for the accomplishment of any of the purposes enumerated in this section;

{n} to prosecute, defend, submit to arbitration, settle, and propose or accept a compromise with respect to any claim existing in favor of or against the principal

based on or involving any banking transaction or to intervene in any related action or proceeding;

{o} to hire, discharge, and compensate any attorney, accountant, expert witness, or other assistant when the attorney in fact considers that action to be desirable for the proper execution of any of the powers described in this section and for the keeping of needed records; and

{p} in general and in addition to all the specific acts listed in this section, to do any other acts in connection with any banking transaction that does or may in any way affect the financial or other interests of the principal;

{2} All powers described in this section are exercisable equally with respect to any banking transaction engaged in by the principal at the giving of the power of attorney or engaged in after that time, whether conducted in Montana or elsewhere."

Section 121. Section 72-31-206, MCA, is amended to read:

"72-31-206. Business Construction of power relating to business operating transactions. {i} In a statutory short form power of attorney, the language conferring general authority granting power with respect to business operating transactions means that the principal authorizes the attorney in fact empowers the agent:

{a}{(1)} to operate, buy, sell, enlarge, reduce, and

1 terminate a business interest;

2 (2) to the extent that an agent is permitted by law to
3 act for a principal and subject to the terms of the
4 partnership agreement, to:

5 (a) discharge--and perform any a duty or discharge a
6 liability and also--to exercise any a right, power,
7 privilege, or option that the principal has, may have, or
8 claims to have under any a partnership agreement, whether or
9 not the principal is a general-or-limited partner;

10 (b) to enforce the terms of a partnership agreement for
11 the-protection-of--the--principal, by action,--proceeding,
12 litigation or otherwise,--as-the-attorney-in-fact-considers
13 desirable-or-necessary; and

14 (c) to defend, submit to arbitration, settle, or
15 compromise any--action-or-other-legal-proceeding litigation
16 to which the principal is a party because of membership in
17 the partnership;

18 (b)(3) to exercise in person or by proxy or to enforce,
19 by action,--proceeding, litigation or otherwise, any a right,
20 power, privilege, or option that the principal has or claims
21 to have as the holder of any a bond, share, or other
22 instrument of similar character and to defend, submit to
23 arbitration, settle, or compromise any-action-or-other-legal
24 proceeding litigation to which the principal is a party
25 because of a bond, share, or other similar instrument of

1 similar-character;

2 (c)(4) with respect to any a business enterprise-that
3 is owned solely by the principal, to:

4 (i)(a) to continue, modify, renegotiate, extend, and
5 terminate any-contractual-arrangements a contract made with
6 any--person, an individual or a legal entity, firm,
7 association, or corporation by or on behalf of the principal
8 with respect to the business enterprise--prior--to--the
9 granting before execution of the power of attorney;

10 (ii)(b) to determine:

11 (i) the--policy--of--the--business-enterprise-as-to the
12 location of the-site-or-sites-to-be-used-for its operation;

13 (ii) the nature and extent of the its business to--be
14 undertaken-by-it;

15 (iii) the methods of manufacturing, selling,
16 merchandising, financing, accounting, and advertising to-be
17 employed in its operation;

18 (iv) the amount and types of insurance to-be carried;

19 (v) the mode of securing engaging, compensating, and
20 dealing with its accountants, attorneys, servants, and other
21 agents and employees required--for--its-operation; and-to
22 agree-and-to-contract-in-any-manner,--with-any-person,--and-on
23 any-terms-that-the-attorney-in-fact-considers--desirable--or
24 necessary--for--effectuating--any-or-all-of-the-decisions-of
25 the-attorney-in-fact-as-to-policy-and-to--perform,--rescind,

1 ~~reform,--release,--or-modify-the-agreement-or-contract-or-any~~
 2 ~~other-similar-agreement-or-contract-made-by-or-on-behalf--of~~
 3 ~~the-principal;~~

4 ~~{iii}{c}~~ to change the name or form of organization
 5 under which the business enterprise is operated and to enter
 6 into a partnership agreement with other persons or to
 7 organize a corporation to take over all or part of the
 8 ~~operation of the business or any part of--the--business,--as~~
 9 ~~the-attorney-in-fact-considers-desirable-or-necessary;~~ and

10 ~~{iv}{d}~~ to demand and receive ~~all~~ money ~~that-is-or-may~~
 11 ~~become due to-the-principal or that-may-be claimed by or-for~~
 12 ~~the principal or on the principal's behalf~~ in the operation
 13 of the business enterprise, to and control and disburse the
 14 funds money in the operation of the enterprise--in--any--way
 15 ~~that--the-attorney-in-fact-considers-desirable-or-necessary,~~
 16 ~~and--to--engage--in--any--banking--transactions---that---the~~
 17 ~~attorney-in-fact---considers---desirable--or--necessary--for~~
 18 ~~effectuating-the-execution-of--any--of--the--powers--of--the~~
 19 ~~attorney-in-fact---described---in---this--subsection--{i}{c}~~
 20 business;

21 (5) to put additional capital into a business in which
 22 the principal has an interest;

23 (6) to join in a plan of reorganization, consolidation,
 24 or merger of the business;

25 (7) to sell or liquidate a business or part of it at

1 the time and upon the terms the agent considers desirable;

2 (8) to establish the value of a business under a buyout
 3 agreement to which the principal is a party;

4 ~~{d}{9}~~ to prepare, sign, file, and deliver ~~all~~ reports,
 5 compilations of information, returns, or other papers with
 6 respect to any a business operating--transaction-of-the
 7 ~~principal~~ that are required by any a governmental agency,
 8 department, or instrumentality or that the ~~attorney-in-fact~~
 9 agent considers desirable or-necessary-for-any--purpose and
 10 to make any related payments; and

11 ~~{e}{10}~~ to pay, compromise, or contest taxes or
 12 assessments and to do any other act or--acts that the
 13 ~~attorney-in-fact agent~~ considers desirable or-necessary to
 14 protect the principal from illegal or unnecessary taxation,
 15 fines, penalties, or assessments in--connection with the
 16 ~~principal's~~ respect to a business operations, including
 17 ~~power---to--attempt~~ attempts to recover, in any manner
 18 permitted by law, sums money paid before or after the
 19 execution of the power of attorney ~~as--taxes,--fines,~~
 20 ~~penalties,--or-assessments;~~

21 ~~{f}--to--demand,--receive,--or--obtain---by--action,~~
 22 ~~proceeding,--or--otherwise-any-money-or-other-thing-of-value~~
 23 ~~to-which-the-principal-is,--may-become,--or-may--claim--to--be~~
 24 ~~entitled--as--the--proceeds-of-any-business-operation-of-the~~
 25 ~~principal,--to-serve,--invest,--disburse,--or-use-anything-so~~

1 received-for-purposes-enumerated-in--this--section;--and--to
2 reimburse-the-attorney-in-fact-for-any-expenditures-properly
3 made--by-the-attorney-in-fact-in-the-execution-of-the-powers
4 conferred-upon-the-attorney-in-fact-by-the--statutory--short
5 form-power-of-attorney;

6 {g)--to--execute;--acknowledge;--seal;--and--deliver-any
7 deed;--assignment;--mortgage;--lease;--notice;--consent;
8 agreement;--authorization;--check;--or-other-instrument-that
9 the-attorney-in-fact-considers-useful-for-the-accomplishment
10 of-any-of-the-purposes-enumerated-in-this-section;

11 {h)--to--prosecute;--defend;--submit---to---arbitration;
12 settle;--and--propose-or-accept-a-compromise-with-respect-to
13 any-claim-existing-in-favor-of--or--against--the--principal
14 based--on-or-involving-any-business-operating-transaction-or
15 to-intervene-in-any-related-action-or-proceeding;

16 {i)--to-hire;--discharge;--and--compensate--any--attorney;
17 accountant;--expert--witness;--or--other--assistant-when-the
18 attorney-in-fact-considers-that-action-to-be--desirable--for
19 the--proper--execution-by-the-attorney-in-fact-of-any-of-the
20 powers-described-in-this-section--and--for--the--keeping--of
21 needed-records;--and

22 {j)--in-general--and-in-addition-to-all-the-specific-acts
23 listed--in--this--section;--to--do--any--other--act-that-the
24 attorney-in-fact-considers-desirable-or--necessary--for--the
25 furtherance--or-protection-of-the-interests-of-the-principal

1 in-any-business;

2 {2)--All--powers---described---in---this---section---are
3 exercisable--equally--with--respect-to-any-business-in-which
4 the-principal-is-interested-at-the-time--of--giving--of--the
5 power---of--attorney--or--in--which--the--principal--becomes
6 interested-after-that-time;--whether-operated-in--Montana--or
7 elsewhere;"

8 **Section 122.** Section 72-31-207, MCA, is amended to
9 read:

10 "72-31-207. Insurance Construction of power relating to
11 insurance transactions. {1} In a statutory short-form power
12 of attorney, the language conferring--general--authority
13 granting power with respect to insurance and annuity
14 transactions means---that--the--principal--authorizes--the
15 attorney-in-fact empowers the agent to:

16 {a}{1} to continue, pay the premium or assessment on,
17 modify, rescind, release, or terminate any a contract of
18 life;--accident;--health;--or--disability--insurance--or--any
19 contract--for--the--provision-of-health-care-services-or-any
20 combination-of-these-contracts procured by or on behalf of
21 the principal prior-to-the-granting-of-the-power-of-attorney
22 that insures or provides an annuity to either the principal
23 or any-other another person, without-regard--to whether or
24 not the principal is or--is--not a beneficiary under the
25 contract;

(b)(2) to procure new, different, or and additional contracts of life, accident, health, or disability insurance and annuities for the principal or contracts for provision of health care services for the principal, to and the principal's spouse, children, and other dependents and to select the amount, the type of insurance or annuity, and the mode of payment under each contract;

(3) to pay the premium or assessment on, modify, rescind, release, or terminate any a contract of insurance or annuity procured by the attorney-in-fact agent;

(4) and--to designate the beneficiary of the contract; provided, however, that the attorney-in-fact an agent may not be named a beneficiary, --except--if--permitted under 72-31-200, the attorney-in-fact may be named the beneficiary of death benefit proceeds under an insurance contract or--if the--attorney-in-fact of the contract or of an extension, renewal, or substitute for the contract only to the extent that the agent was named as a beneficiary under the a contract that was procured by the principal prior--to--the granting before executing of the power of attorney, the attorney-in-fact may continue to be named as the beneficiary under the contract or under any extension or renewal--of--or substitute for the contract;

(c)(5) with--respect to any contract of life, accident, health, disability, or liability insurance as to--which--the

principal--has--or--claims--to--have--any one or more of the powers described in this section, to apply for and receive any--available a loan on the security of the contract of insurance, whether for the payment of a premium or--for--the procuring of cash, or annuity;

(6) to surrender and then to receive the cash surrender value;

(7) to exercise any an election as to beneficiary or mode of payment;

(8) to change the manner of paying premiums;

(9) to change or convert the type of insurance contract, --and or annuity, with respect to which the principal has or claims to have a power described in this section;

(10) to change the beneficiary of the a contract of insurance, or annuity; provided, however, that--the attorney-in-fact the agent may not be designated a new beneficiary, except if to the extent permitted under 72-31-200,--the--attorney-in-fact--may be the beneficiary of death benefit proceeds under an insurance contract or--if the attorney-in-fact--was--named--as--a--beneficiary--under--the contract that was procured by the--principal--prior--to--the granting--of the power of attorney, the attorney-in-fact may continue to be named as the beneficiary under--the--contract or--under--any extension or renewal of or substitute for the

1 contract by subsection (4);

2 {d}--to--demand,--receive,--or--obtain--by--action,

3 proceeding,--or--otherwise--any--money,--dividend,--or--other--thing

4 of--value--to--which--the--principal--is,--may--become,--or--may--claim

5 to--be--entitled--as--the--proceeds--of--any--contract--of--insurance

6 or--of--one--or--more--of--the--transactions--enumerated--in--this

7 section,--to--conserve,--invest,--disburse,--or--utilize--anything

8 received--for--purposes--enumerated--in--this--section,--and--to

9 reimburse--the--attorney--in--fact--for--any--expenditures--properly

10 made--by--the--attorney--in--fact--in--the--execution--of--the--powers

11 conferred--on--the--attorney--in--fact--by--the--statutory--short

12 form--power--of--attorney;

13 {e}{11} to apply for and procure any--available

14 governmental government aid in--the--guaranteeing--or--paying--of

15 to guarantee or pay premiums of any a contract of insurance

16 on the life of the principal;

17 {f}{12} to collect, sell, assign, hypothecate, borrow

18 upon, or pledge the interest of the principal in any a

19 contract of insurance or annuity; and

20 {g}{13} to pay from any proceeds or otherwise,

21 compromise, or contest, or--to and apply for refunds in

22 connection with any a tax or assessment levied by a taxing

23 authority with respect to any a contract of insurance or

24 annuity or the its proceeds of--the--refunds or liability

25 accruing by reason of the tax or assessment;

1 {h}--to--agree--and--contract,--in--any--manner,--with--any

2 person,--and--on--any--terms--that--the--attorney--in--fact--selects,

3 for--the--accomplishment--of--any--of--the--purposes--enumerated--in

4 this--section--and--to--perform,--rescind,--reform,--release,--or

5 modify--the--agreement--or--contract;

6 {i}--to--execute,--acknowledge,--seal,--and--deliver--any

7 consent,--demand,--request,--application,--agreement,--indemnity,

8 authorization,--assignment,--pledge,--notice,--check,--receipt,

9 waiver,--or--other--instrument--that--the--attorney--in--fact

10 considers--useful--for--the--accomplishment--of--any--of--the

11 purposes--enumerated--in--this--section;

12 {j}--to--continue,--procure,--pay--the--premium--or--assessment

13 on,--modify,--rescind,--release,--terminate,--or--otherwise--deal

14 with--any--contract--of--insurance,--other--than--those--enumerated

15 in--subsection--{i}{a}--or--{i}{b},--whether--fire,--marine,

16 burglary,--compensation,--liability,--hurricane,--casualty,--or

17 other--type,--or--any--combination--of--insurance--or--to--do--any--act

18 or--acts--with--respect--to--the--contract--or--with--respect--to--its

19 proceeds--or--enforcement--that--the--attorney--in--fact--considers

20 desirable--or--necessary--for--the--promotion--or--protection--of

21 the--interests--of--the--principal;

22 {k}--to--prosecute,--defend,--submit--to--arbitration,

23 settle,--and--propose--or--accept--a--compromise--with--respect--to

24 any--claim--existing--in--favor--of--or--against--the--principal

25 based--on--or--involving--any--insurance--transaction--or--to

intervene in any related action or proceeding;

{i}--to hire, discharge, and--compensate--any--attorney, accountant,--expert--witness,--or--other--assistant when the attorney in fact considers the action to be--desirable--for the--proper--execution by the attorney in fact of any of the powers described in this section--and--for--the--keeping--of needed records;--and

{m}--in general and in addition to all the specific acts listed--in--this section, to do any other acts in connection with procuring, supervising, managing, modifying, enforcing, and terminating contracts of insurance or for the provisions of health care--services--in--which--the--principal--is--the insured or is otherwise in any way interested.

{2}--All--powers---described---in---this---section---are exercisable with respect to any contract of insurance or for the provision of health care service in which the--principal is--in--any--way--interested,--whether--made--in--Montana or elsewhere."

Section 123. Section 72-31-208, MCA, is amended to read:

"72-31-208. Beneficiary Construction of power relating to estate, trust, and other beneficiary transactions. {i} In the a statutory short-form power of attorney, the language conferring general authority granting power with respect to estate, trust, and other beneficiary transactions, means

that the principal authorizes the attorney in fact:

{a}--to represent and empowers the agent to act for the principal in all ways and in all matters affecting any that affect a trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund out of from which the principal is, may become, entitled or claims to be entitled as a beneficiary to some a share or payment, including but not limited to the following:

{i}{1} to accept, reject, disclaim, receive, receipt for, sell, assign, release, pledge, exchange, or consent to a reduction in or modification of any a share in or payment from the fund;

{ii}{2} to demand or obtain, by action, proceeding, litigation or otherwise, any money or other thing of value to which the principal is, may become, or may claim claims to be entitled by reason of the fund;

{3} to initiate, participate in, and oppose any proceeding, judicial, or otherwise, for the ascertainment of litigation to ascertain the meaning, validity, or effect of any a deed, will, declaration of trust, or other instrument or transaction affecting in--any--way the interest of the principal;

{4} to initiate, participate in, and oppose any proceeding,--judicial--or--otherwise,--for--the--removal, substitution, litigation to remove, substitute, or surcharge

1 of a fiduciary;

2 (5) to conserve, invest, disburse, or and use anything
3 received for purposes-listed-in-this-section an authorized
4 purpose; and to--reimburse--the--attorney-in-fact--for--any
5 expenditures--properly--made--by-the-attorney-in-fact-in-the
6 execution-of-the-powers-conferred-on-the-attorney-in-fact-by
7 the-statutory-short-form-power-of-attorney;

8 {iii}-to-prepare, sign, file, and deliver--all--reports,
9 compilations-of-information, returns, or papers-with-respect
10 to--any--interest--had--or--claimed--by--or--on-behalf-of-the
11 principal-in-the-fund, to-pay, compromise, contest, or apply
12 for-and-receive--refunds--in--connection--with--any--tax--or
13 assessment,--with--respect-to-any-interest-had-or-claimed-by
14 or-on-behalf-of-the-principal-in-the-fund-or-with-respect-to
15 any-property-in-which-an-interest-is-had-or-claimed;

16 {iv}-to-agree-and--contract--in--any-manner,--with--any
17 person,--and--on-any-terms-the-attorney-in-fact-selects,--for
18 the-accomplishment-of-the-purposes-listed--in--this--section
19 and--to--perform,--rescind,--reform,--release,--or-modify-the
20 agreement-or-contract-or--any--other--similar--agreement--or
21 contract-made-by-or-on-behalf-of-the-principal;

22 {v}-to--execute,--acknowledge,--verify,--seal,--file,--and
23 deliver-any--deed,--assignment,--mortgage,--lease,--consent,
24 designation,--pleading,--notice,--demand,--election,--conveyance,
25 release,--assignment,--check,--pledge,--waiver,--admission-of

1 service, notice-of-appearance, or other instrument that--the
2 attorney-in-fact--considers-useful-for-the-accomplishment-of
3 any-of-the-purposes-enumerated-in-this-section;

4 {vi}-to-submit-to-arbitration, settle,--and--propose--or
5 accept-a-compromise-with-respect-to-any-controversy-or-claim
6 that--affects--the-administration-of-the-fund, in-any-one-of
7 which-the-principal-has-or-claims-to-have-an-interest-and-to
8 do-any-and-all-acts-that-the-attorney-in-fact--considers--to
9 be-desirable-or-necessary-in-effectuating-the-compromise;

10 {vii}-to--hire,--discharge,--and-compensate-any-attorney,
11 accountant, expert-witness,--or--other--assistant--when--the
12 attorney-in-fact--considers--that-action-to-be-desirable-for
13 the-proper-execution-by-the-attorney-in-fact-of-any--of--the
14 powers--described--in--this--section--and-for-the-keeping-of
15 needed-records;

16 {viii}{6) to transfer any-part--or--all--of--any an
17 interest that of the principal may-have in any-interests--in
18 real estate property, stocks, bonds, bank accounts with
19 financial institutions, insurance, and any other assets--of
20 any-kind--and--nature property to the trustee of any a
21 revocable trust created by the principal as grantor settlor.

22 {b)-in-general-and-in-addition-to-all-the-specific--acts
23 listed-in-this-section, to-do-any-other-acts-with-respect-to
24 the-administration-of-a-trust, probate-estate, guardianship,
25 conservatorship,--escrow,--custodianship,--or--other-fund-in

which the principal has or claims to have an interest as a beneficiary;

{2}--For the purposes of subsection {1}, "fund" means any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or any other fund in which the principal has or claims to have an interest;

{3}--All powers described in this section are exercisable equally with respect to the administration or disposition of any trust, probate estate, guardianship, conservatorship, escrow, custodianship, or other fund in which the principal is interested at the giving of the power of attorney or becomes interested after that time as a beneficiary, whether located in Montana or elsewhere."

Section 124. Section 72-31-211, MCA, is amended to read:

"72-31-211. Claims Construction of power relating to claims and litigation. {1} In a statutory short-form power of attorney, the language conferring general authority with respect to claims and litigation means that the principal authorizes the attorney-in-fact empowers the agent to:

{a}{1} to assert and prosecute before any a court, or administrative board, department, commissioner, or other tribunal any cause of action, agency a claim, counterclaim, or offset, or defense that the principal has or claims to have and defend against any an individual, partnership,

association, corporation a legal entity, or government, or other person or instrumentality, including by way of illustration and not of restriction, power to sue for the recovery of land or of any suits to recover property or other thing of value, for the recovery of to recover damages sustained by the principal in any manner, for the elimination or modification of to eliminate or modify tax liability, for or to seek an injunction, for specific performance, or for any other relief;

{b}{2} to bring an action of interpleader or other action to determine adverse claims, to intervene or interplead in any action or proceeding litigation, and to act in any litigation as amicus curiae;

{c}{3} in connection with any action or proceeding or controversy at law or otherwise, to apply for and, if possible litigation, procure a libel judgment, an attachment, a garnishment, libel, an order of arrest, or other preliminary, provisional, or intermediate relief and to resort to and to utilize in all ways permitted by law any use an available procedure for the effectuation or satisfaction of the to effect or satisfy a judgment, order, or decree obtained;

{d}{4} in connection with any action or proceeding, at law or otherwise litigation, to perform any lawful act that the principal might perform, including by way of

1 ~~illustration--and--not-of-restriction~~, acceptance of tender,
 2 offer of judgment, admission of any facts, submission of any
 3 a controversy on an agreed statement of facts, and consent
 4 to examination before trial, and ~~generally-to-bind~~ binding
 5 the principal in the--conduct--of--any litigation or
 6 ~~controversy-as-seems-desirable-to-the-attorney-in-fact~~;

7 {e}{5} to submit to arbitration, settle, and propose or
 8 accept a compromise with respect to any a claim existing-in
 9 ~~favor-of-or-against-the-principal~~ or any litigation to-which
 10 ~~the-principal-is~~, may-become, or-may-be-designated-a-party;

11 {f}{6} to waive the issuance and service of a--summons,
 12 citation, or--other process upon the principal; to accept
 13 service of process; to appear for the principal; to
 14 designate persons upon whom process directed to the
 15 principal may be served; to execute and file or deliver
 16 stipulations on the principal's behalf; to verify
 17 pleadings; to-appeal-to seek appellate tribunals review;
 18 to procure and give surety and indemnity bonds ~~at-the-times~~
 19 ~~and-to-the-extent-the-attorney-in-fact--considers--desirable~~
 20 ~~or--necessary~~; to contract and pay for the preparation and
 21 printing of records and briefs; or--to and receive, and
 22 execute, and file or deliver any a consent, waiver, release,
 23 confession of judgment, satisfaction of judgment, notice,
 24 agreement, or other instrument ~~that--the--attorney-in-fact~~
 25 ~~considers--desirable--or--necessary~~ in connection with the

1 prosecution, settlement, or defense of any a claim by or
 2 ~~against--the--principal--or--of--any~~ litigation to-which-the
 3 ~~principal-is~~, may-become, or-may-be-designated-a-party;

4 {g}{7} to--appear--for,--represent--and act for the
 5 principal with respect to bankruptcy or insolvency
 6 proceedings, whether voluntary or involuntary, ~~whether-of~~
 7 concerning the principal or of some other person, with
 8 respect to any a reorganization proceeding or with-respect
 9 to-any a receivership or application for the appointment of
 10 a receiver or trustee that in--any--way affects any an
 11 interest of the principal in any-real property, bond, share,
 12 commodity-interest, tangible--personal--property, or other
 13 thing of value; and

14 {h}--to--hire,--discharge,--and-compensate-any-attorney,
 15 accountant, expert-witness, or--other--assistant--when--the
 16 attorney-in-fact--considers--that-action-to-be-desirable-for
 17 the-proper-execution-of-any-of-the-powers-described-in--this
 18 section;

19 {i}{8} to pay--from--funds--in--the--control--of--the
 20 attorney-in-fact--or-for-the-account-of-the-principal, any a
 21 judgment against the principal or any a settlement that--may
 22 be made in connection with any-transaction-enumerated-in
 23 this-section, to litigation and receive and conserve any
 24 money or other things thing of value paid in settlement of
 25 or as proceeds of one-or-more-of-the-transactions-enumerated

1 in this section, and to receive, endorse, and deposit
2 checks; and

3 {j} in general and in addition to all the specific acts
4 listed in this section, to do any other acts in connection
5 with any claim by or against the principal or with
6 litigation to which the principal is, may become, or may be
7 designated a party;

8 {2} All powers described in this section are
9 exercisable equally with respect to any a claim or
10 litigation existing at the giving of the power of attorney
11 or arising after that time, whether arising in Montana or
12 elsewhere."

13 **Section 125.** Section 72-31-212, MCA, is amended to
14 read:

15 "72-31-212. Family Construction of power relating to
16 personal and family maintenance. {1} In a statutory short
17 form power of attorney, the language conferring general
18 authority granting power with respect to personal and family
19 maintenance means that the principal authorizes the
20 attorney-in-fact empowers the agent to:

21 {a}(1) to do all the acts necessary for maintaining to
22 maintain the customary standard of living of the principal
23 and the principal's spouse, children, and other dependents
24 individuals customarily or legally entitled to be supported
25 by the principal, including, by way of illustration and not

1 of restriction, power to provide providing living quarters
2 by purchase, lease, or other contract or by payment of
3 paying the operating costs, including interest, amortization
4 payments, repairs, and taxes, of on premises owned by the
5 principal and occupied by the principal's family or
6 dependents those individuals;

7 {2} to provide for the individuals described in
8 subsection (1) normal domestic help for the operation of the
9 household; to provide usual vacations and usual travel
10 expenses; to provide usual educational facilities; and to
11 provide funds for all the current living costs of the
12 spouse, children, and other dependents, including, among
13 other things, shelter, clothing, food, appropriate
14 education, and incidentals other current living costs;

15 {b}(3) to pay for the individuals described in
16 subsection (1) necessary medical, dental, and surgical care,
17 hospitalization, and custodial care for the spouse,
18 children, and other dependents of the principal;

19 {c}(4) to continue whatever any provision has been made
20 by the principal, either prior to or after the execution of
21 the power of attorney, for the principal's spouse, children,
22 and other dependents with respect to individuals described
23 in subsection (1) for automobiles or other means of
24 transportation, including, by way of illustration but not of
25 restriction, power to license, insure, and replace any

1 automobiles-owned-by-the-principal-and-customarily-used-by
2 the-spouse,--children,--or--other--dependents registering,
3 licensing, insuring, and replacing them;

4 {d}(5) to--continue--whatever maintain or open charge
5 accounts have-been-operated-by-the-principal--prior--to--the
6 execution-of-the-power-of-attorney-or-after-execution-of-the
7 power--of--attorney for the convenience of the principal's
8 spouse,--children,--or--other--dependents,--to individuals
9 described in subsection (1) and open new accounts the
10 attorney-in-fact agent considers to--be desirable for--the
11 accomplishment--of--any--of--the--purposes-enumerated-in-this
12 section to accomplish a lawful purpose; and to-pay-the-items
13 charged-on--those--accounts--by--any--person--authorized--or
14 permitted--by--the--principal--to--make-charges-prior-to-the
15 execution-of-the-power-of-attorney;

16 {e}(6) to continue payments incidental to the
17 membership or affiliation of the principal in any a church,
18 club, society, order, or other organization or to continue
19 contributions to those organizations;

20 {f}--to--demand,--receive,--or--obtain--by--action,
21 proceeding,--or--otherwise--any--money--or--other--thing--of--value
22 to-which-the-principal-is,--may-become,--or--may--claim--to--be
23 entitled--to--as--salary,--wages,--commission,--or--other
24 remuneration--for--services--performed,--as--a--dividend--or
25 distribution-upon-any-stock,--or--as--interest--or--principal

1 upon--any--indebtedness--or--any--periodic--distribution--of
2 profits--from--any--partnership--or--business--in--which-the
3 principal-has-or-claims-an-interest-and-to-endorse,--collect,
4 or--otherwise--realize-upon-any--instrument--for--the--payment
5 received;

6 {g}--to--use--any--asset--of--the--principal--for--the
7 performance--of--the--powers--enumerated--in--this--section,
8 including,--by--way--of--illustration--and--not--of--restriction,
9 power--to--draw--money--by--check--or--otherwise--from--any--bank
10 deposit-of-the-principal,--to--sell--any--interest--in--real
11 property,--bonds,--shares,--commodity--interests,--tangible
12 personal-property,--or--other--assets-of-the-principal,--and--to
13 borrow--money--and--pledge--as--security--for--a--loan,--any--asset,
14 including--insurance,--that--belongs--to--the--principal;

15 {h}--to--execute,--acknowledge,--verify,--seal,--file,--and
16 deliver--any--application,--consent,--petition,--notice,--release,
17 waiver,--agreement,--or--other--instrument--that--the
18 attorney-in-fact--considers--useful--for--the--accomplishment--of
19 any--of--the--purposes-enumerated-in-this-section;

20 {i}--to--hire,--discharge,--and--compensate--any--attorney,
21 accountant,--or--other--assistant--when--the--attorney-in-fact
22 considers--that--action--to--be--desirable--for--the--proper
23 execution-by-any-of-the-powers-described-in-this-section--and
24 for--the--keeping--of--needed--records,--and

25 {j}--in-general--and--in-addition--to--all--the--specific-acts

1 listed-in-this-section, to do any other acts for the welfare
2 of the spouse, children, or other dependents or for the
3 preservation and maintenance of the other personal
4 relationships of the principal to parents, relatives,
5 friends, and organizations as are appropriate.

6 {2} All powers described in this section are
7 exercisable equally whether the acts required for their
8 execution relate to real or personal property owned by the
9 principal at the giving of the power of attorney or acquired
10 after that time, whether those acts are performable in
11 Montana or elsewhere."

12 NEW SECTION. Section 126. Construction of power
13 relating to benefits from social security, medicare,
14 medicaid, or other governmental programs or from military
15 service. In a statutory power of attorney, the language
16 granting power with respect to benefits from social
17 security, medicare, medicaid or other governmental programs
18 or from civil or military service empowers the agent to:

19 (1) execute vouchers in the name of the principal for
20 allowances and reimbursements payable by the United States
21 or a foreign government or by a state or subdivision of a
22 state to the principal, including allowances and
23 reimbursements for transportation of the individuals
24 described in 72-31-212(1), and for shipment of their
25 household effects;

1 (2) take possession and order the removal and shipment
2 of property of the principal from a post, warehouse, depot,
3 dock, or other place of storage or safekeeping, either
4 governmental or private, and execute and deliver a release,
5 voucher, receipt, bill of lading, shipping ticket,
6 certificate, or other instrument for that purpose;

7 (3) prepare, file, and prosecute a claim of the
8 principal to a benefit or assistance, financial or
9 otherwise, to which the principal claims to be entitled,
10 under a statute or governmental regulation;

11 (4) prosecute, defend, submit to arbitration, settle,
12 and propose or accept a compromise with respect to any
13 benefits the principal may be entitled to receive; and

14 (5) receive the financial proceeds of a claim of the
15 type described in this section and conserve, invest,
16 disburse, or use anything received for a lawful purpose.

17 NEW SECTION. Section 127. Construction of power
18 relating to retirement plan transactions. In a statutory
19 power of attorney, the language granting power with respect
20 to retirement plan transactions empowers the agent to:

21 (1) select payment options under any retirement plan in
22 which the principal participates, including plans for
23 self-employed individuals;

24 (2) designate beneficiaries under those plans and
25 change existing designations;

(3) make voluntary contributions to those plans;

(4) exercise the investment powers available under any self-directed retirement plan;

(5) make "rollovers" of plan benefits into other retirement plans;

(6) if authorized by the plan, borrow from, sell assets to, and purchase assets from the plan; and

(7) waive the right of the principal to be a beneficiary of a joint or survivor annuity if the principal is a spouse who is not employed.

NEW SECTION. Section 128. Construction of power relating to tax matters. In a statutory power of attorney, the language granting power with respect to tax matters empowers the agent to:

(1) prepare, sign, and file federal, state, local, and foreign income, gift, payroll, Federal Insurance Contributions Act, and other tax returns; claims for refunds; requests for extension of time; petitions regarding tax matters; and any other tax-related documents, including receipts, offers, waivers, consents (including consents and agreements under Internal Revenue Code section 2032A or any successor section), closing agreements, and any power of attorney required by the internal revenue service or other taxing authority with respect to a tax year upon which the statute of limitations has not run and the following 25 tax

years;

(2) pay taxes due, collect refunds, post bonds, receive confidential information, and contest deficiencies determined by the internal revenue service or other taxing authority;

(3) exercise any election available to the principal under federal, state, local, or foreign tax law; and

(4) act for the principal in all tax matters for all periods before the internal revenue service and any other taxing authority.

NEW SECTION. Section 129. Existing interests -- foreign interests. The powers described in this part are exercisable equally with respect to an interest the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the powers are exercised or the power of attorney is executed in this state.

NEW SECTION. Section 130. Uniformity of application and construction. This part must be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this part among states enacting it.

NEW SECTION. Section 131. Application of [sections 103 through 112]. [Sections 103 through 112] apply to registrations of securities in beneficiary form made before

or after [the effective date of this act], by decedents dying on or after [the effective date of this act].

NEW SECTION. Section 132. Codification instruction.

(1) [Section 21] is intended to be codified as an integral part of Title 72, chapter 2, part 2, and the provisions of Title 72, chapter 2, part 2, apply to [section 21].

(2) [Section 34] is intended to be codified as an integral part of Title 72, chapter 2, part 3, and the provisions of Title 72, chapter 2, part 3, apply to [section 34].

(3) [Section 47] is intended to be codified as an integral part of Title 72, chapter 2, part 5, and the provisions of Title 72, chapter 2, part 5, apply to [section 47].

(4) [Section 56] is intended to be codified as an integral part of Title 72, chapter 2, part 8, and the provisions of Title 72, chapter 2, part 8, apply to [section 56].

(5) [Sections 61 through 72 and 83 through 112] are intended to be codified as an integral part of Title 72, chapter 1, and chapter 2, parts 1 through 8, and the provisions of Title 72, chapter 1, and chapter 2, parts 1 through 8, apply to [sections 61 through 72 and 83 through 112].

(6) [Sections 114, 115, 119, and 126 through 130] are

intended to be codified as an integral part of Title 72, chapter 31, part 2, and the provisions of Title 72, chapter 31, part 2, apply to [sections 114, 115, 119, and 126 through 130].

NEW SECTION. Section 133. Repealer. Sections 32-1-442,

32-1-443, 33-20-151, 70-1-309, 72-1-102, 72-1-110, 72-2-303, 72-2-501, 72-2-503, 72-2-511, 72-10-101, 72-10-102, 72-10-103, 72-10-104, 72-10-105, 72-10-106, 72-10-107, 72-10-108, 72-10-109, 72-10-110, 72-10-111, 72-10-112, 72-10-113, 72-10-201, 72-10-202, 72-10-203, 72-10-204, 72-11-105, 72-11-201, 72-11-202, 72-11-203, 72-11-204, 72-11-205, 72-11-301, 72-11-302, 72-11-303, 72-11-304, 72-11-305, 72-11-306, 72-11-307, 72-11-308, 72-11-309, 72-11-310, 72-11-311, 72-11-312, 72-11-313, 72-11-314, 72-11-315, 72-11-316, 72-11-317, 72-11-318, 72-11-319, 72-11-320, 72-11-321, 72-11-322, 72-11-331, 72-11-332, 72-11-333, 72-12-104, 72-12-201, 72-12-202, 72-12-203, 72-12-204, 72-12-205, 72-12-301, 72-12-302, 72-12-501, 72-12-502, 72-12-503, 72-12-601, 72-12-602, 72-12-603, 72-12-604, 72-12-605, 72-12-701, 72-12-702, 72-12-703, 72-12-704, 72-12-801, 72-12-802, 72-12-803, 72-12-901, 72-12-1001, 72-12-1002, 72-12-1003, 72-12-1004, 72-13-101, 72-13-102, 72-13-103, 72-13-201, 72-13-202, 72-13-203, 72-13-301, 72-31-209, 72-31-210, 72-31-213, 72-31-214, 72-31-215, and 72-31-216, MCA, are repealed.

1 NEW SECTION. **Section 134.** Retroactive applicability.

2 The amendment to 72-36-206(1) applies retroactively, within
3 the meaning of 1-2-109, to conveyances recorded on or before
4 October 1, 1989. The amendment also applies to conveyances
5 recorded after October 1, 1989.

6 NEW SECTION. **Section 135.** Saving clause. [This act]
7 does not affect rights and duties that matured, penalties
8 that were incurred, or proceedings that were begun before
9 [the effective date of this act].

-End-

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ----- REREFERRED ----- DATE READ

SB0078	GAGE, DEL		ONLY ATTY. MAY REPRESENT STATE IN CERTAIN DUI LICENSE SUSPENSION HEARINGS			
	1/08	1/19		PASS AS AMENDED	1-25	1/25
SB0093	BECK, TOM		ELIMINATE HANGING AS FORM OF CAPITAL PUNISHMENT			
	1/07	1/21		DO PASS	1-28	1/27
SB0108	GAGE, DEL		GENERAL, MINOR REVISIONS OF CRIMINAL JUSTICE INFORMATION LAWS			
	1/08	1/22		DO PASS	1-28	1/27
SB0109	DOHERTY, STEVE		EXPAND CRIMINAL CODE DEFINITION OF "SERIOUS BODILY INJURY"			
	1/08	1/22		PASS AS AMENDED	1-28	1/28
SB0117	HALLIGAN, MIKE		FAMILY LAW MEDIATION PROCESS			
	1/09	1/13		PASS AS AMENDED	1-25	1/26
SB0119	HALLIGAN, MIKE		GENERALLY REVISE PROBATE AND ESTATE LAWS			
	1/11	2/01		PASS AS AMENDED	2-16	2/17
SB0124	VAN VALKENBURG, FRED		REVISE FINDERS OF PROPERTY LAW			
	1/11	1/20		DO PASS	1-28	1/27
SB0125	VAN VALKENBURG, FRED		GENERALLY REVISE CRIMINAL PROCEDURE			
	1/11	1/22		PASS AS AMENDED	1-28	1/28
SB0129	DOHERTY, STEVE		ELIMINATE REQUIREMENT TO IDENTIFY DRIVER IN SCHOOL BUS VIOLATION			
	1/12	1/19		DO PASS	1-25	1/25
SB0140	REA, JACK		DEFINING LEGAL RESPONSIBILITY IN EQUINE ACTIVITIES			
	1/13	1/20		PASS AS AMENDED	1-27	1/29
SB0146	WATERMAN, MIGNON		LIMITED LIABILITY COMPANY ACT			
	1/14	1/21		PASS AS AMENDED	1-25	1/25
SB0150	BARTLETT, SUE		CONFORM CHILD SUPPORT ENFORCEMENT LAWS TO FEDERAL LAW			
	1/14	1/26		PASS AS AMENDED	1-29	1/29

under the current statute, pawnbrokers could hold the property for 30 days.

Senator Towe asked Mr. Pleiner if he would have an objection to requiring pawnbrokers to hold property for 30 days unless a request was made by a peace officer to surrender the property. Mr. Pleiner said no.

Closing by Sponsor:

Senator Crippen told the Committee SB 238 would still protect the pawnbrokers, but would shift the emphasis of protection to the victims.

HEARING ON SB 119

Opening Statement by Sponsor:

Senator Halligan, District 29, opened.

Proponents' Testimony:

Professor Edwin Eck, University of Montana School of Law, summarized his prepared testimony. (Exhibit #1)
Professor Eck submitted a letter from Ada Harlen. (Exhibit #2)
Professor Eck submitted a copy of Article VI (Exhibit #3),
Article II (Exhibit #4), 1991 Uniform Probate Code (Exhibit #5),
Uniform Statutory Form Power of Attorney Act (Exhibit #6).

Richard Baskett, an attorney in Missoula, explained the revisions in SB 119. The first area of revision deals with the changes in society concerning multiple marriages and how property would be distributed in those instances. The second area of change deals with the distribution of property. The substantive change in the provision would eliminate the definition of who would be the next of kin. The third area of revisions makes changes that reflect a preference as to how a property would be distributed, based on studies done by the American College of Probate Council. Section 13 of the act deals with the definition of representation. The study found per capital representation to be the most preferred type of representation.

Kristen Juras, Montana State Bar, said the Uniform Probate Code greatly simplifies the probate process and reduces cost and attorney fees for people who have to go through the probate process. Ms. Juras told the Committee about the elective share provision. Ms. Juras explained the longer a couple is married, the more money a person would receive upon the death of their spouse.

Dan McLane, attorney in Billings, told the Committee about the new Article VI provision. Mr. McLane said SB 119 eliminates the problem of creating property rights. This legislation makes it possible for a person to open an account and name someone as a

beneficiary to take over after they die, bypassing the probate process. SB 119 allows a person to open an account and name someone as an agent, without giving them ownership rights. SB 119 would not regulate the banking industry or financial institutions. The provisions deal with property rights, not with the institutions themselves.

Patrick Dougherty, attorney for Worden, Thane, and Haines Law Firm, told the Committee about the revisions to Title 72, Chapter 31, Part 2. (Exhibit #7)

Bob Pyfer, Montana Credit Unions League, told the Committee that credit unions are consumer financial cooperatives owned and controlled by their user members and governed by a volunteer Board of Directors. Section 84 through section 102 of SB 119 would enact comprehensive changes in law relating to accounts. SB 119 would make changes that would have a direct effect on credit union operations. Mr. Pyfer said there were questions that needed to be answered before SB 119 was passed. Mr. Pyfer told the Committee Section 97 and section 101 of SB 119, talk about how the financial institution can pay out money in a multiple party account to any party. The statement which goes to the consumer, does not say that the financial institution would give all the money to anybody who comes in and asks for it. The cards that are provided by the credit union say, "these funds are subject to withdrawal by any of the joint owners, and payment to any of them discharges the credit union from any liability for payment." The second item on page 151, section 92, talks about the alteration of rights. The second sentence states that the type of account may be altered by written notice given by a party to the financial institution to change the type of account or stop payment under the terms of the account. Mr. Pyfer said that would be a basic operation change. Mr. Pyfer said he is concerned for the credit union. There is a joint share account provision in the Federal Credit Union Accounting Manual, which is put out by the federal regulator that says that it should be noted that a person requesting deletion from a joint account can only request his own deletion and not that of any other joint owner. Mr. Pyfer said his concern on page 154, section 97, is how a financial institution would know who to pay the money to because there would be no personal representative acting over the estate. There is a provision in the Uniform Probate Code that provides for disbursement by affidavit for small estates, the only exception is for a personal representative. Mr. Pyfer said that would need to be cleared up because financial institutions should not make the decision as to who are the heirs of an estate. Another concern is on page 155, section 100, regarding the payment to minors. The Montana Uniform Transfers to Minors Act does not provide for payment to minors. Mr. Pyfer asked for a delay in the effective date until after the next session in order to educate credit unions and those people dealing with SB 119. Mr. Pyfer is in favor of SB 119 because it is very helpful on the part of the agencies.

Bruce MacKenzie, D.A. Davidson Company, supports SB 119 and would like to see it enacted as soon as possible.

Opponents' Testimony:

George Bennett, Montana Bankers Association, told the Committee the effective date of SB 119 should be delayed so everyone could be educated on SB 119. Mr. Bennett said if the Montana Bankers Association could be assured that Article VI would fit with the present law, then they would endorse it.

Questions From Committee Members and Responses:

Senator Towe asked Professor Eck about Article 2. Professor Eck said Article 2 deals with the surviving spouse and children from prior marriages. The present law does not deal with prior marriages. The revised Uniform Law Commission recognizes the share of the spouse and stepchildren.

Senator Towe asked Professor Eck why the present law should be changed. Professor Eck said under existing law the surviving spouse receives everything without taking into consideration that there may be children from a previous marriage from the decedent. SB 119 says that if the decedent has assets, the assets would go to all the children when the spouse of the decedent dies.

Senator Towe asked Professor Eck about the distribution of assets to the grandchildren. Professor Eck told the Committee about a survey that focused on how grandparents would want their assets distributed to the grandchildren. The response was they wanted to treat the grandchildren alike.

Senator Blaylock asked Ms. Juras if SB 119 should be delayed. Ms. Juras said no. Ms. Juras said she was satisfied with SB 119, but would like to meet with Mr. Pyfer about his concerns to clarify the bill to his satisfaction.

Senator Towe asked Mr. McLane about multiple family accounts in Article VI. Mr. McLane said in multiple family accounts, if there are three names on the account, the last surviving party would be the beneficiary.

Closing by Sponsor:

Senator Halligan said he would be willing to work with any of the practitioners to make sure SB 119 was workable and consistent.

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 2-1-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty			X
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

SENATE BILL NO. 119

SENATE JUDICIARY
EXHIBIT NO. 1
DATE 2-1-93
BILL NO. SB119

E. Edwin Eck
University of Montana
School of Law
Missoula, Montana 59812

243-6534

A. MATTERS COVERED IN SENATE BILL NO. 119 ("THE BILL")

1. Revised Article II of the Uniform Probate Code (Intestacy, Wills, and Donative Transfers (1990)) - [Sections 3 through 72 of the Bill]
2. Revised Chapters 10, 11, 12, and 13 of Title 72 MCA affecting "Supplementary" Provisions on Intestate Succession, Wills, Probate, Administration, and Persons Under Disability - [Sections 76 through 80 of the Bill]
3. Definition of "Stepchild" for the purposes of the Montana Inheritance Tax (MCA section 72-16-313) - [Section 81 of the Bill]
4. Effective Date provision of section 72-36-206 (Montana Trust Code) dealing with conveyances to trusts prior to October 1, 1989 - [Sections 82 and 134 of the Bill]
5. Revised Article VI of the Uniform Probate Code (Nonprobate Transfers on Death (1989)) - [Sections 83 through 112 of the Bill]
6. Uniform Statutory Form Power of Attorney Act - [Sections 113 through 131 of the Bill]

B. HISTORY OF THE UNIFORM PROBATE CODE IN MONTANA

C. REVISED ARTICLE II OF THE UNIFORM PROBATE CODE (INTESTACY, WILLS, AND DONATIVE TRANSFERS (1990)) - [Sections 3 through 72 of the Bill]

1. Intestate Succession. The changes recognize the increasing portion of our population who have been married more than once and who have stepchildren and children by previous marriages. The major provisions can best be summarized by examples:

Example 1. Decedent is survived by a spouse, no parents, and descendants who are also descendants of the surviving spouse. Surviving spouse has no other descendants.

Surviving spouse will receive the entire intestate estate. [No change from existing law.]

-

Example 2. Decedent is survived by a spouse, a parent, and no descendants.

Surviving spouse will receive the first \$200,000 plus $\frac{3}{4}$ of the remaining intestate estate. The surviving parent will receive the remainder. [Under existing law, the surviving parent would receive nothing.]

-

Example 3. Decedent is survived by a spouse, no parent, and descendants who are also descendants of the surviving spouse. Surviving spouse has other descendants who are not descendants of the decedent.

Surviving spouse will receive the first \$150,000 plus $\frac{1}{2}$ of the remaining intestate estate. The decedent's descendants will receive the remainder. [Under existing law, the decedent's descendants would receive nothing.]

-

Example 4. Decedent is survived by a spouse, no parent, and descendants who are not descendants of the surviving spouse.

Surviving spouse will receive the first \$100,000 plus $\frac{1}{2}$ of the remaining intestate estate. The decedent's descendants will receive the remainder. [Under existing law, the surviving spouse would receive $\frac{1}{2}$ of the intestate estate if the decedent had one child (or the issue of one child). The child (or issue) would receive the remainder. If the decedent had more than one child (or the issue of more than one child), the surviving spouse would receive $\frac{1}{3}$ of the intestate estate. The children (or issue) would receive the remainder.]

-

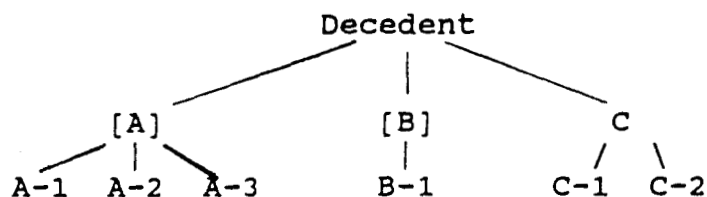
Example 5. Decedent is not survived by any spouse, any descendants, any parents, any siblings, any grandparents, nor any descendants of grandparents. Decedent's only surviving relative is a third cousin (8th degree of relationship).

The intestate estate would pass to the State of Montana. The remote relative ("laughing heir") is excluded. [Under existing law, the third cousin would receive the intestate estate.]

Note: Under the Bill, if the decedent had any surviving grandparents, uncles, aunts, first cousins or descendants of first cousins, those relatives would take before the State of Montana.

-

Example 6. Decedent is not survived by any spouse. Two of decedent's children, A and B, predecease the decedent. The decedent's third child, C, survives. A had three children, A-1, A-2, and A-3 who survived the decedent. B had one child, B-1, who survived the decedent. C has two children, C-1 and C-2, who survived the decedent.



C takes 1/3 of the intestate estate. The other two 1/3 shares are combined into a single share (amounting to 2/3 of the estate) and is distributed to A-1, A-2, A-3, and B-1 equally (1/6 apiece). People equally related to the decedent receive the same share. [Under existing law, A-1, A-2, and A-3 would have received their parent's 1/3 share. Thus, each of them would have received 1/9 of the estate. B-1 would have received his parent's 1/3 share. The decedent's grandchildren would have been treated differently.]

2. Elective Share of Surviving Spouse. The Elective Share provisions of the Uniform Probate Code protect a surviving spouse from disinheritance by the decedent spouse. The Bill continues this protection but recognizes a partnership (or marital-sharing) theory of marriage. As a result, the Bill would increase the entitlement of a surviving spouse in a long-term marriage in cases in which the marital assets were disproportionately titled in the decedent's name. The Bill would decrease or even eliminate the entitlement of a surviving spouse in a long-term marriage in cases in which the marital assets were more or less equally titled or disproportionately titled in the surviving spouse's name. Further, the Bill would decrease or even eliminate the entitlement of a surviving spouse in a short-term, later-in-life, marriage in which neither spouse contributed much, if anything, to the acquisition of the other's wealth. However, a special supplemental elective-share amount is provided in cases in which the surviving spouse would otherwise be left without sufficient funds for support.

The elective share is increased to one-half (50 percent) for marriages that last 15 years or longer. However, in the short-term marriage, the elective share is decreased. For example, a marriage of one year entitles a spouse to an elective share of only 3 percent. For each year up to 15 years, the percentages increases. At year 15, the surviving spouse's share reaches a full 50 percent. This staged increase signifies the increased contribution by the surviving spouse in the accumulation of property by the deceased spouse. It also recognizes the fact of second marriages in which there may be other familial obligations with a better claim upon the deceased spouse's property until the marriage has sufficient longevity to merit a full 50 percent share for the surviving spouse.

The augmented estate has been modified as well. Unlike existing law, the augmented estate takes the net assets of the surviving spouse into account, instead of just the property that the surviving spouse receives from the decedent. In order to determine the elective share, all of the assets in the marriage must be included.

These revised elective share provisions have been endorsed by the Assembly of the National Association of Women Lawyers on the unanimous recommendation of its Executive Board.

3. Spouse and Children Unprovided For in Wills. These provisions continue the protection of existing law to a spouse who marries after the decedent has executed a will. Similar protection is provided for children who were born or adopted after the execution of the will. The new provisions include only refinements of existing law.
4. Exempt Property and Allowances. These provisions continue the homestead, exempt property, and family allowances of existing law. Some amounts are increased where dollar limits are imposed.
5. Wills, Will Contracts, and Custody and Deposit of Wills. A will is a formally executed document that establishes who will have a person's property at death. But for the entitlements inherent in the family noted above, the law favors wills and honors the intent of the person who makes one. The consistent policy of the Uniform Probate Code is to validate testamentary documents and to eliminate technical determinations of invalidity, where and when possible. The holographic will (carried over from the original to the revised Uniform Probate Code) is a primary example of this policy.

The revised Uniform Probate Code develops this liberal policy even further. A new provision permits a document (or writing added upon a document) that is not executed in accordance with the rules of execution for wills, to be given testamentary effect if it can be established by clear and convincing evidence that it was intended to be a will or intended to modify in some way a pre-existing will. In other words, this provision reduces formalistic court decisions which discard attempts at will making and will modification.

6. Rules of Construction Applicable Only to Wills. There is a need for rules of construction because the drafting of wills does not always take into account every contingency - even when drafting is careful and proper. There are some underlying principles that commonly link these rules of construction. One such principle is the principle of the testator's intent. In so far as possible, wills are construed to carry out the intent of the persons who make them.

An important rule of construction provides for lapsed devises. A lapsed devise is one to a person who predeceases the person who makes the will. The law has struggled with the problem of terminating such a devise (as opposing to saving it) by extending it to the next surviving generation. Generally, the debate has been resolved in the favor of statutory antilapse provisions for devises within a family that preserve the devise in the favor of those who are descendants of the deceased devisee.

The original Uniform Probate Code had an antilapse provision. The revised Uniform Probate Code contains a major effort to resolve the problems of antilapse statutes. The resolution includes both individual devises and class devises. If an individual devise is to a grandparent, a descendant of a grandparent, or a stepchild of the testator, then predeceasing the testator means that the devise will carry to the next generation of descendants of the devisee who live. For class gifts, which are gifts to unnamed but described common group, the prior death of a class member allows descendants of that class member to succeed to the class member's share.

Of course, the preceding presupposes that there is no express substitute devisee in the will. If an express substitute devisee is named in the will, the substitute will take the gift if there is a lapse.

7. Rules of Construction Applicable to Wills and Other Governing Instruments. Construction rules, such as antilapse provisions, are extended beyond wills in the revised Uniform Probate Code. This, perhaps, is the most important innovation to be found in the revised Uniform Probate Code. There are rules of construction for other donative instruments -- i.e. trusts, insurance contracts, POD provisions in account contracts, and TOD provisions on investment securities. An enormous quantity of property passes in transfers which are nonprobate in character.
8. General Provisions Concerning Probate and Nonprobate Transfers. Rules relating to disclaimers and the effect of divorce and the effect of homicide on gratuitous transfers have been refined and expanded to cover nonprobate transfers.

The Revised Article II has received the endorsement of American Association of Retired Persons. For more information contact:

Melissa B. Burkholder
Consumer Issues Team Leader
AARP State Legislation Department
601 E Street, N.W.
Washington, DC 20049
(202) 434-3050

D. REVISED CHAPTERS 10, 11, 12, AND 13 OF TITLE 72 MCA AFFECTING "SUPPLEMENTARY" PROVISIONS ON INTESTATE SUCCESSION, WILLS, PROBATE, ADMINISTRATION, AND PERSONS UNDER DISABILITY - [Sections 76 through 80 of the Bill]

The bulk of these sections were adopted by our Territorial Legislature in 1877. With occasional amendments, these provisions have been continued over the years.

The provisions were continued after Montana adopted the Uniform Probate Code in 1974. In many instances the provisions of Chapters 10, 11, 12, and 13 are unnecessary because the subject matter is covered by the Uniform Probate Code. In some instances, the provisions are inconsistent with the Uniform Probate Code. Thus the Bill simply repeals most of the provisions of Chapters 10, 11, 12, and 13.

In a few instances, the provisions remain valuable portions of statutory law. However, some of those provisions needed rewriting in "twentieth century" English. Thus, for example, the sections on determining degrees of relationship (MCA sections 72-11-101 through 72-11-104) have been rewritten and are found in Sections 76 through 79 of the Bill.

D. DEFINITION OF "STEPCHILD" FOR THE PURPOSES OF THE MONTANA INHERITANCE TAX (MCA SECTION 72-16-313) - [Section 81 of the Bill]

In 1991, the inheritance tax exemption for transfers to stepchildren was expanded. MCA section 72-16-313(2)(b) included a reference to a "stepparent" but did not include a definition of the term. Section 81 of the Bill incorporates the definition found in revised Article II of the Uniform Probate Code.

F. EFFECTIVE DATE PROVISION OF SECTION 72-36-206 (MONTANA TRUST CODE) DEALING WITH CONVEYANCES TO TRUSTS PRIOR TO OCTOBER 1, 1989 - [Sections 82 and 134 of the Bill]

In 1991, subsection (8) was added to section 72-36-206 to rectify title issues which could arise when a deed purports to make a transfer to a named trust, rather than to a designated trustee. Unfortunately, subsection (1) contained language indicating that the section did not affect conveyances recorded prior to October 1, 1989 (the effective date of the Montana Trust Code). Arguably the benefits of subsection (8) were limited to those deeds recorded after October 1, 1989.

Section 82 of the Bill eliminates this date restriction and Section 134 of the Bill applies this modification retroactively.

G. REVISED ARTICLE VI OF THE UNIFORM PROBATE CODE (NONPROBATE TRANSFERS ON DEATH (1989)) - [Sections 83 through 112 of the Bill]

The original Uniform Probate Code promulgated by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1969 included an Article VI relating to Nonprobate Transfers on Death. To date, over one-half of all the states have adopted the multiple party accounts provisions of Article VI even though some of those states have not adopted the Uniform Probate Code in its entirety. However, Montana has yet to adopt the provisions relating to multiple party accounts.

In 1989, the National Conference of Commissioners revised Article VI and included new provisions for the Transfer on Death (TOD) of securities.

1. Multiple-Person Accounts. Sections 84 through 102 deal with accounts at financial institutions (banks, savings and loan associations, credit unions, etc.). Checking accounts, savings accounts, certificates of deposit, and share accounts are covered by these provisions.

- a. Forms. Section 87 of the Bill provides convenient forms which financial institutions may utilize.

These forms enable a person establishing a multiple-party account to state expressly whether there are to be survivorship rights between the parties.

The significant consumer benefit of these provisions is that a depositor is forced to consciously address the issue of whether or not

another individual is to receive survivorship benefits in an account. More than occasionally, litigation arises after the death of a depositor concerning the depositor's "intent" to provide a survivorship benefit to another. Perhaps the depositor did not realize that the language concerning survivorship benefits was buried in the form creating the account. Perhaps one of several children was named on a "joint" account form because a parent wanted a nearby child to handle some transactions with the account. Perhaps the depositor's estate plan will be upset if a survivorship condition is imposed. A depositor who uses a form provided by the Uniform Probate Code has a clear choice whether or not to create a right of survivorship.

Further, a depositor can simply name another who will acquire ownership rights only upon the death of the depositor. Such is known as a Pay on Death (POD) account.

Finally, a depositor can designate an agent under a power of attorney designation. The agent has no ownership rights but can make account transactions.

b. Rights of Creditors and Others. Section 94 of the Bill makes it clear that a transfer resulting from a right of survivorship or a POD designation is liable to the estate of the decedent depositor to discharge any remaining unpaid claims against the estate and any unpaid family, homestead, and exempt property allowances.

c. Protection of Financial Institutions. Sections 96 through 102 of the Bill provide substantial protections for the financial institution. For example, Section 99 protects a financial institution that makes a payment pursuant to an account with an agency designation, even though the agency may have been terminated at the time of payment due to disability, incapacity, or death of the principal.

2. TOD Security Registration Act. Sections 103 through 112 deal with securities, including stocks, mutual fund shares, and accounts maintained by brokers and others to reflect a customer's holdings of securities ("street accounts").

- a. Registration in "Beneficiary Form". Section 105 permits registration in "beneficiary form". Under the definition of Section 103(1), "beneficiary form" means a registration of a security that indicates both the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner. Such can be accomplished by using the words "transfer on death", "TOD", "pay on death", and "POD".
- b. Rights of Creditors. Section 111(2) of the Bill makes it clear that a transfer resulting at death does not limit the rights of creditors of security owners.
- c. Protection of Registering Entity. Section 110 of the Bill provides protection to the registering entity which registers a transfer in good faith.

These TOD provisions received the official endorsement of the Securities Industry Association (SIA). The SIA is the trade association representing more than 600 securities firms headquartered throughout the United States and Canada.

Nothing in Article VI of the Uniform Probate Code (UPC) is inconsistent with the Uniform Commercial Code (UCC). In fact the Commissioners' comments under several sections of Article VI of the UPC include references to related sections in the UCC.

As noted, the revised Uniform Probate Code has received the endorsement of American Association of Retired Persons.

H. UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT - [Sections 113 through 131 of the Bill]

The Uniform Statutory Power of Attorney Act provides legislative sanction to a statutory form that can be used instead of individually-drafted forms. The use of the statutory form (Section 113 of the Bill) is supported by the expressed authority of the State.

In 1991, a similar provision was enacted in Montana. That provision was based upon an earlier version of Minnesota law. To a great extent, the Uniform Act and the Minnesota statute are similar. However, the Uniform Act is superior in the following respects:

1. Uniformity. The Uniform Act has the benefits of uniformity, including the benefit of case law from other jurisdictions.

2. Fraud. The Uniform Act reduces the possibility of a fraudulent increase in the powers granted an agent. To grant a power under the Uniform Act, the principal must sign his (her) initials on a line in front of the specified power. Existing law merely requires the placement of an "X".
3. Commodity Transactions. Under the Uniform Act a principal may grant an agent authority to engage in stock and bond transactions but not grant the agent authority to engage in more risky commodity and option transactions. Existing law lumps all of these transactions together.
4. Government Benefits. The Uniform Act provides express authority to engage in transactions concerning benefits from social security, medicare, medicaid, and other governmental programs. Existing law does not have express authority to engage in such transactions.
5. Indemnification. The Uniform Act includes indemnification provisions to anyone who has relied upon the power of attorney. Existing law does not include similar provisions. Thus third parties are less likely to recognize powers of attorney executed under existing law.
6. Retirement Benefits. The Uniform Act provides express authority to engage in transactions concerning retirement benefits. Existing law does not include similar provisions.
7. Concise. The Uniform Act is more concise than existing law. Section 115 of the Bill includes several provisions relating to the construction of powers. Existing law repeats similar construction provisions in 10 separate sections.
8. Gifts. The Uniform Act does not include provisions authorizing the agent to make gifts. Existing law includes express provisions for gifts. Since the Power of Attorney is likely to be signed without the assistance of counsel, the dangers of granting such an express power is not likely to be apparent to the principal.

LAW OFFICES OF
HARLEN, THOMPSON & PARISH, P.C.

800 SIXTH AVENUE
HELENA, MONTANA 59601

SENATE JUDICIARY

EXHIBIT NO. 2

DATE 2-1-93

BILL NO. SB119

ADA J. HARLEN
SHAUN R. THOMPSON
RICHARD L. PARISH
THOMAS K. HARLEN

February 1, 1993

TELEPHONE: (406) 443-0360

FAX: (406) 443-0362

Senator William Yellowtail
Chairman, Senate Judiciary Committee
State Capitol
Helena, MT 59620

Re: Senate Bill #119

Dear Senator Yellowtail:

I was scheduled to appear before your committee today concerning Senate Bill No. 119. A prior business commitment has prevented me from doing so. Please accept this letter in lieu of my testimony.

I was one of the initial committee members responsible for the implementing and adoption of the Montana Uniform Probate Code in 1975, and the only female committee member. Montana did not adopt the Uniform Probate Code in total and in retrospect perhaps we should have done just that, since as we continue to work with it on a daily basis, we realize it needs updating.

Senate Bill #119 deals with Article II (concerning Intestacy Provisions) and Article VI (concerning Nonprobate Transfers) of the Uniform Probate Code. Nonprobate transfers deal with joint tenancy accounts, payable on death accounts and trust accounts.

The avoidance of probate is a high priority of my clients' concerns in estate planning. Montana is long overdue in adopting the provisions of Senate Bill No. 119. Clarifying the treatment of nonprobate assets would be a benefit to every Montanan.

If I can provide any further information, please let me know. Thank you for our consideration.

Sincerely,



(Mrs.) Ada J. Harlen

cc: Members of Senate Judiciary Committee

JUDICIARY
NO. 4
2-1-93
BILL NO. SB119

UNIFORM PROBATE CODE

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS (1990)

(With Revised Article 1, Sections 1-107 and 1-201)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-NINTH YEAR
IN MILWAUKEE, WISCONSIN
JULY 13 - 20, 1990



WITH PREFATORY NOTE AND COMMENTS

NONPROBATE TRANSFERS (1989)

where notary public who drafted deed testified that grantor told him she wanted to leave real estate to grandson but that she wanted security for herself, and grandson lived with grantor prior to grantor's death and made repairs, lived in, and paid taxes on house. *Vigil v. Sandoval*, App.1987, 741 P.2d 816, 106 N.M. 233.

5. Letter of intent

Letter of intent as to distribution of father's estate, entered into by daughter and son, did not constitute binding contract; although letter recited that parties intended to take steps necessary to obtain the equitable distribution spelled out therein, no further steps were taken and daughter

testified that she had viewed letter as proposal containing ideas which had to be reviewed with other family members before they became effective. *Butler v. Hardy*, Me.1990, 576 A.2d 202.

6. Sale agreement

Evidence supported conclusion that sale agreement, under which daughter agreed to sell her inheritance from father to son in return for \$650 previously loaned by son and his agreement to pay all inheritance taxes, was valid; agreement was unambiguous, written by daughter in her own hand, was duly signed and witnessed, and recited consideration for promise. *Butler v. Hardy*, Me.1990, 576 A.2d 202.

ARTICLE VI

NONPROBATE TRANSFERS ON DEATH (1989)

Historical Notes

A Revised Article VI of the Uniform Probate Code [Nonprobate Transfers on Death (1989)], was approved by the National Conference of Commissioners on Uniform State Laws in 1989. The complete text of the revised article, as well as the prefatory note and comments, are set forth in this supplement.

See material relating to the prior Article VI, supra, this supplement.

Adoption of Uniform Multiple-Person Accounts Act and Uniform TOD Security Registration Act

Note that Parts 2 and 3 of Revised Article 6 have also been adopted as the free-standing Uniform Multiple-Person Accounts Act and Uniform TOD Security Registration Act, respectively. See the supplement to Volume 8A.

Committees

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Probate Code Article VI—Nonprobate Transfers on Death—(1989) was as follows:

William S. Arnold, P.O. Drawer A, Crossett, AR 71635, *Chairman*
John H. DeMouilly, Law Revision Commission, Suite D-2, 4000 Middlefield Road, Palo Alto, CA 94303, *Drafting Liaison*
Clarke A. Gravel, P.O. Box 1049, 76 St. Paul Street, Burlington, VT 05402
Maurice A. Hartnett, III, Chambers, Court of Chancery, 45 The Green, Dover, DE 19901
William E. Kretschmar, P.O. Box 36, 211 West Main Street, Ashley, ND 58413
John H. Langbein, University of Chicago Law School, 1111 East 60th Street, Chicago, IL 60637
Godfrey L. Munter, Suite 400, 4801 Massachusetts Avenue, N.W., Washington, DC 20016
Willis E. Sullivan, III, P.O. Box 359, Boise, ID 83701
Richard V. Wellman, University of Georgia, School of Law, Athens, GA 30602

Review Committee

Thomas L. Jones, University of Alabama, School of Law, P.O. Box 5557, Tuscaloosa, AL 35486, *Chairman*
Timothy J. Cronin, Jr., New England School of Law, 154 Stuart Street, Boston, MA 02116
Alvin J. Meiklejohn, Jr., Suite 1600, 1625 Broadway, Denver, CO 80202

Ex-Officio

Michael P. Sullivan, P.O. Box 35286, 5701 Green Valley Drive, Minneapolis, MN 55435, *President, NCCUSL*
William J. Pierce, University of Michigan Law School, Ann Arbor, MI 48109, *Executive Director, NCCUSL*
Henry M. Kittleson, P.O. Box 32092, 92 Lake Wire Drive, Lakeland, FL 33802 *Chairman, Division D*

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 2-1-93
BILL NO. SB119

UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT

IN ALL THE STATES EXHIBIT NO. 6

at its

DATE 2-1-93
BILL NO. SB119

ANNUAL CONFERENCE
MEETING IN ITS NINETY-SEVENTH YEAR
IN WASHINGTON, D.C.
JULY 29 - AUGUST 5, 1988



WITH PREFATORY NOTE AND COMMENTS

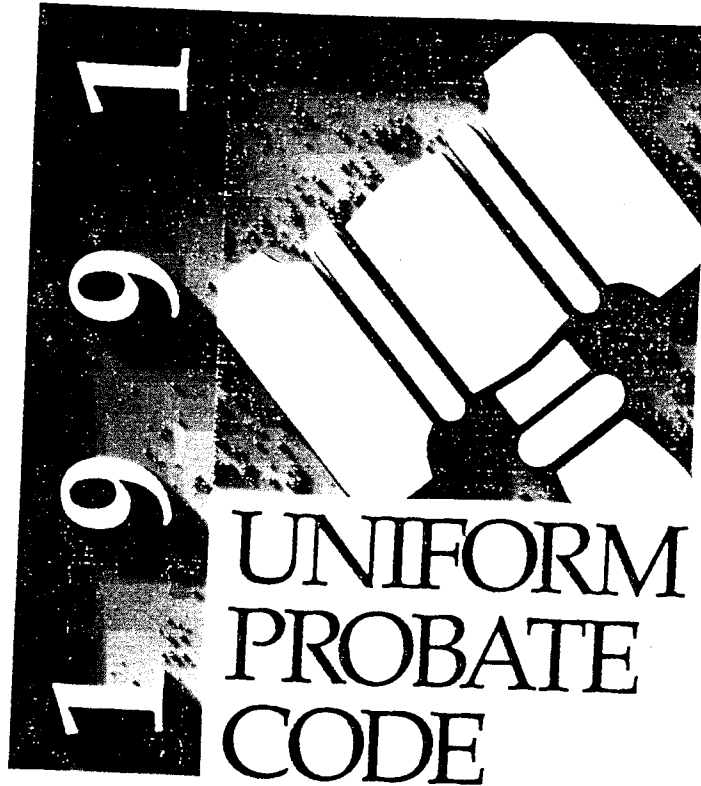
Approved by the American Bar Association
Honolulu, Hawaii, August 9, 1989

SENATE JUDICIARY

EXHIBIT NO. 5

DATE 2-1-93

BILL NO. SB119



2-1-93

NAME GEORGE T. BENNETT
ADDRESS 111 No. MAIN ARCADE 3-1 HELENA
HOME PHONE 442-9855 WORK PHONE 442-3691 5966
REPRESENTING MONTANA BANKERS ASSOCIATION
APPEARING ON WHICH PROPOSAL? SB119
DO YOU: SUPPORT OPPOSE X AMEND X

COMMENTS:

EFFECTIVE DATE SHOULD BE
DELAYED TO ALLOW MORE
PUBLIC STUDY AND COMMENT.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

SENATE JUDICIARY
EXHIBIT NO. 7
DATE 2-1-93
BILL NO. SB119

UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT

Senate Bill No. 119----Sections 113-130

Modifications and revisions to existing Title 72, Chapter 31,
Part 2--"Statutory Short Form Power of Attorney.

1. Elimination of the term "short"--13 separate categories of powers.
2. Adoption of Uniform Act--Advantage of uniformity of application and construction.
3. Adoption of Uniform Act--Interpretation by other jurisdictions will further aid explanation and construction.
4. Section 113. Powers granted are indicated by insertion of grantor's initials rather than with an "x".
5. Section 114. Allows for durable power--powers granted will continue to be effective if grantor becomes disabled, incapacitated or incompetent.
6. Section 116. Construction of powers generally--One section covers general powers and eliminates repetitious and redundant language in each category section.
7. Elimination of the following categories of powers:
 - a) Gift transactions
 - b) Fiduciary transactions
 - c) "Records, Reports, and Statements"
 - d) "All Other Matters"
8. Addition of the following categories of powers:
 - a) Social Security, Medicare, Medicaid, and other governmental programs.
 - b) Retirement plan transactions.
 - c) Tax Matters.
9. Expansion of power for Family Maintenance to Personal and Family Maintenance.
10. Separation of power on Stock and Bond Transactions from Commodity Transactions.

Summary prepared by:
Patrick Dougherty
Worden, Thane, and Haines, P.C.
Box 4747
Missoula, Mt. 59806-4747
(406) 721-3400

DATE Feb 1, 1993

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 119 Halligan
S.B. 238 Crispin

Name

Organization

Bill

Check One

E. E. W. - Ed	U of M Trans	119	✓	
PATRICK DOUGHERTY	MT STATE BAR	119	✓	
Kristen Juras	MT State Bar	119	✓	
Richard M. Baskett	SELF	119	✓	
Pez Childs	MLPS	153	✓	
John R Voeller	U of M	119	✓	
Bob Dyser	MT Practitioner Unions League	119	✓	
Bruce A. MacKenzie	Securities Industry Assoc DNDCO	119	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

there is an existing remedy to take care of complaints.

Questions From Committee Members and Responses:

NONE

Closing by Sponsor:

Senator Burnett closed.

EXECUTIVE ACTION ON SB 119

Motion:

Senator Halligan moved to AMEND SB 119. (Exhibit #1)

Discussion:

Valencia Lane explained the amendments.

A memorandum from Ed Eck was submitted into the record. (Exhibit #2)

Vote:

The motion to amend SB 119 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Halligan moved SB 119 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 210

Discussion:

Chair Yellowtail told the Committee that the sponsor recommended TABLING SB 210.

Motion:

Senator Doherty moved to TABLE SB 210. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 41

Motion/Vote:

Senator Halligan moved to TABLE SB 41. The motion CARRIED UNANIMOUSLY.

ROLL CALL

SENATE COMMITTEE Judiciary

DATE 2-16-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe			X
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
February 17, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 119 (first reading copy -- white), respectfully report that Senate Bill No. 119 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 145, line 25.

Following: "intent."

Insert: "However, any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account."

2. Page 154, lines 8 and 9.

Following: "representative" on line 8

Strike: remainder of line 8 through "party" on line 9

Insert: "or a successor claiming under 72-3-1101"

-END-

ADN Amd. Coord.
m Sec. of Senate

390948SC.San

Amendments to Senate Bill No. 119
First Reading Copy

For the Committee on Judiciary

Prepared by Valencia Lane
February 16, 1993

1. Page 145, line 25.

Following: "intent."

Insert: "However, any one party may withdraw the entire amount on
deposit in the account. Further, any one party may change
the type of account."

2. Page 154, lines 8 and 9.

Following: "representative" on line 8

Strike: remainder of line 8 through "party" on line 9

Insert: "or a successor claiming under 72-3-1101"

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 2-16-93
BILL NO. SB119

MEMORANDUM

TO: SENATOR MIKE HALLIGAN
FROM: Ed Eck
RE: Senate Bill 119
DATE: February 11, 1993

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 2-16-93
BILL NO. SB119

Robert C. Pyfer of the Montana Credit Union Network and I have agreed to 2 changes to the above bill.

1. page 145 after line 25
Insert the following language:

"However any one party may withdraw the entire amount on deposit in the account. Further, any one party may change the type of account."

2. page 154 lines 8 & 9

Strike the following language:

"if any, or if there is none, the heirs or devisees of a deceased party"

Add the following language:

"or a successor claiming under 72-3-1101,"

Also, Mr. Pyfer and I would like the executive committee minutes to reflect the following:

"Section 97 does not authorize the financial institution to pay sums to a personal representative of a decedent who was a party to a multiple party account without right of survivorship upon that personal representative's unilateral request."

Finally I have been advised by Mr. George Bennett that the Montana Bankers' Association does not oppose this Bill.

cc Mr. Robert C. Pyfer
Mr. George Bennett

COMMITTEE--HOUSE JUDICIARY

Page 10

- BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE - REREFERRED - DATE READ

SB0108	GAGE, DEL		GENERAL, MINOR REVISIONS OF CRIMINAL JUSTICE INFORMATION LAWS				
	1/30	3/03		CONCUR AS AMENDED	3/3	VOTE: 18-0	3/06
SB0109	DOHERTY, STEVE		EXPAND CRIMINAL CODE DEFINITION OF "SERIOUS BODILY INJURY"				
	2/01	3/03		CONCUR	3/3	VOTE: 18-0	3/04
SB0117	HALLIGAN, MIKE		FAMILY LAW MEDIATION PROCESS				
	1/30	3/05		CONCUR AS AMENDED	3/5	VOTE: 18-0	3/08
SB0119	HALLIGAN, MIKE		GENERALLY REVISE PROBATE AND ESTATE LAWS				
	2/23	3/26		CONCUR AS AMENDED	3/26	VOTE: 17-1	3/30
SB0124	VAN VALKENBURG, FRED		REVISE FINDERS OF PROPERTY LAW				
	1/30	3/11		CONCUR	3/16	VOTE: 18-0	3/17
SB0125	VAN VALKENBURG, FRED		GENERALLY REVISE CRIMINAL PROCEDURE				
	2/01	3/03		CONCUR AS AMENDED	3/5	VOTE: 18-0	3/08
SB0129	DOHERTY, STEVE		ELIMINATE REQUIREMENT TO IDENTIFY DRIVER IN SCHOOL BUS VIOLATION				
	1/28	2/04		CONCUR AS AMENDED	2/4	VOTE: 17-0	2/08
SB0140	REA, JACK		DEFINING LEGAL RESPONSIBILITY IN EQUINE ACTIVITIES				
	2/04	3/02		CONCUR	3/3	VOTE: 16-2	3/04
SB0146	WATERMAN, MIGNON		LIMITED LIABILITY COMPANY ACT				
	1/28	2/04		CONCUR	2/4	VOTE: 17-2	2/08
SB0150	BARTLETT, SUE		CONFORM CHILD SUPPORT ENFORCEMENT LAWS TO FEDERAL LAW				
	2/02	3/10		CONCUR AS AMENDED	3/10	VOTE: 16-0	3/12
SB0153	DOHERTY, STEVE		REVISE REQUIRED AUTO LIABILITY INSURANCE REQUIREMENTS AND PENALTIES				
	2/10	3/12		CONCUR AS AMENDED	3/25	VOTE: 10-8	3/25
SB0173	BARTLETT, SUE		PROCEDURE FOR ALTERNATE RETIREMENT BENEFIT PAYEE UNDER FAMILY LAW ORDER				
	2/09	3/05		CONCUR	3/10	VOTE: 15-1	3/12

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 26, 1993, at
7:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Dave Brown (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 119
Executive Action: SB 9, SB 23, SB 323, SB 119,
SB 409, SB 351, SB 78

HEARING ON SB 119

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, Senate District 29, Missoula, stated that SB 119 is an act generally revising the law concerning estates, wills, and donative transfers. SEN. HALLIGAN distributed

testimony which explains the intent of SB 119. EXHIBIT 1

Proponents' Testimony:

E. Edwin Eck, Professor of Law, University of Montana School of Law, Missoula, presented written testimony. EXHIBITS 2, 3, 4, 5, and 6

Kristen Juras, probate attorney, Great Falls, focused on the proposed changes of the spouses' elected share. In Montana children can be disinherited but spouses cannot be. A spouse has the right, under current law, to take one-third of the estate. Attorneys believe long marriages are similar to an economic partnership and that partner is entitled to 50 percent.

Dan McLean, trial attorney, Billings and Helena, addressed Article 6, Non-probate Transfers on Death Act and said the typical situation is parents putting their children's names on accounts, which is done much too often. When opening an account, they should make a conscious decision whether this is going to be a multiple party account or a single party account and whether there's going to be a table of death (TOD) designation. He said this is a consumer bill.

Bruce MacKenzie, attorney, representing Securities Industry Association and D.A. Davidson Company, testified in support of Sections 1, 2, 3 and 12 specifically. The state of Montana says the transfer on death provisions aren't applicable. He explained the difference between a trust fund and a trust account.

Joel Nemo, Montana Credit Union Network, stated that the Montana Credit Union Network supports SB 119.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. RUSSELL, a Native American who lives on the Crow Reservation, said all Native American money is held in trust; there are no wills. REP. RUSSELL referred to page 3, example 5 of Professor Eck's exhibit and said the relationships of Indian people are so extended; she wondered whether, if this law passes, some relationships would be excluded. Professor Eck clarified what "relatives" means. Relatives exempted would be any grandparent or a descendent of a grandparent, first cousins, first cousins once-removed, grandchildren, great-grandchildren, etc. The thought behind this is someone very remotely connected should not benefit unless so stated in the will.

REP. RICE referred to the sliding scale on the spouses' elective share in section 60 of the bill, and asked if that is part of the

uniform language. Ms. Juras confirmed that is part of the uniform language.

REP. WHALEN asked Professor Eck if anything has been done with regard to preference for plaintiff for personal representatives in the event an individual dies intestate, and if so, what those changes would be. Professor Eck said those provisions are found in Article 3 of the Uniform Probate, and nothing in this bill relates to that.

REP. RUSSELL said it is Indian tradition that grandparents raise their grandchildren as their own, but existing law does not recognize that. She asked if current law recognizes Native American cultural differences, and if there is a difference between legally adopted children and a natural child.

Professor Eck said legally adopted children are treated the same as natural children.

Closing by Sponsor: None

EXECUTIVE ACTION ON SB 9

Motion: REP. WHALEN moved an amendment to reinsert the language which was stricken on page 3, lines 8 and 9.

Discussion:

REP. WHALEN stated that the purpose of this amendment is because of the nature of small claims court. In the level of courts, the lowest possible court is the small claims court, the next level being justice court. The next level would be municipal courts and state district courts.

REP. VOGEL asked REP. WHALEN why he wouldn't want to allow a resident living in a county other than Yellowstone, for example, to have someone served with a claim when that person has damaged another's property. REP. WHALEN said that resident would have available justice court jurisdiction and, in fact, justice court judges serve as small claims court judges. He added that the small claims court has jurisdiction over very small amounts, and the small claims court in Shelby shouldn't have jurisdiction over someone in Alzada.

Vote: REP. WHALEN'S amendment to reinsert language on page 3 failed on a vote of 5-12 with CHAIRMAN FAGG, REPS. VOGEL, BROWN, BIRD, BERGMAN, BROOKE, CLARK, GRIMES, SAYLES, SMITH, TASH, and WINSLOW voting no. REP. MCCULLOCH did not vote.

Motion: REP. TOOLE MOVED SB 9 BE TABLED.

Motion/Vote: REP. WYATT moved the amendment to change "shock" to "boot camp". Amendment carried unanimously. EXHIBIT 7

REP. BIRD asked if the committee addressed the issue of allowing minors in the camp, and REP. SAYLES answered per Mr. Gamble, that by law, juveniles would not be allowed in the camp. They need different types of rehabilitation. Eighteen years of age would be the minimum age.

CHAIRMAN FAGG distributed Senate amendments striking "youthful." Apparently, these amendments were adopted in the Senate and should have been included in the bill but for some reason were not. EXHIBIT 8

Motion/Vote: REP. BIRD moved an amendment requested by SEN. CHRISTIAENS to strike "youthful." Amendment carried unanimously.

Motion/Vote: REP. RUSSELL moved an amendment to replace the word "youthful" with "women" on line 18, page 1 to read: "for female and male offenders." Amendment carried unanimously.

Mr. Pomroy, Department of Corrections and Human Services, said that the recidivism rate for those coming out of boot camp is less than those who haven't gone through it. They also go to pre-release centers.

Motion/Vote: SB 323 BE CONCURRED IN AS AMENDED. Motion carried 15-3 with REPS. WINSLOW, BROWN, AND McCULLOCH voting no.

EXECUTIVE ACTION ON SB 119

Motion: REP. TOOLE MOVED SB 119 BE CONCURRED IN.

Motion/Vote: REP. TOOLE moved an amendment to let grandchildren take an equal share in the inheritance or assets so they don't have to go to court. Mr. MacMaster will assist in drafting the amendment. Motion carried 17-1 with REP. VOGEL voting no.

REP. RUSSELL discussed the possibility of applying the Crow Indian's cultural law into state law that grandparents raise their grandchildren as their own, and these children would be considered heirs. She explained that tribes are subject to state law, and cultural relationships have been considered in the past. In the hearing, she discussed how Indian children are raised by their grandparents and in their culture they are considered their children. This had not been drafted into an amendment or a concept amendment.

Vote: SB 119 BE CONCURRED IN AS AMENDED. Motion carried 17-1 with REP. BROWN voting no.

Mr. Richard M. Baskett, Datsopoulos, MacDonald & Lind, P.C., Attorneys at Law, Missoula, distributed a letter supporting SB 119. EXHIBIT 9

EXECUTIVE ACTION ON SB 409

Motion: REP. BROWN MOVED SB 409 BE CONCURRED IN.

Motion/Vote: REP. SAYLES moved amendments proposed by SEN. HOCKETT. Motion carried 17-1 with REP. BIRD voting no. EXHIBIT 10

Motion: REP. TOOLE moved an amendment to remove Section 3 from the bill. He doesn't feel immunity is necessary in this bill.

Discussion:

REP. BIRD agreed with REP. TOOLE and said she believes immunity is unnecessary. REP. SAYLES stands in opposition to the amendment. He believes the department is going for immunity, and in order to save Section 3, it can be rewritten. REP. TASH said Section 3 is drafted to offer a certain amount of immunity and the section is needed in the bill. He stated the section is needed to protect and guarantee that people have that level of volunteers, especially in the areas that are underserved by professional EMTs.

Mr. MacMaster explained that Section 3 provides immunity to a member of a quality assurance committee. SB 409 includes such committees in both the private and public sectors formed by the Department of Health and Environmental Sciences (DHES). If immunity is going to be given to the members of DHES on this committee, a section should be added to the bill stating it requires a two-thirds vote. The Montana Constitution states local and state governments have no immunity without a two-thirds vote of each house of the legislature.

Vote: REP. TOOLE'S amendment to strike Section 3 from the bill failed 9-8 with CHAIRMAN FAGG, REPS. VOGEL, BROWN, BERGMAN, CLARK, GRIMES, SAYLES, SMITH, and TASH voting no. REP. WINSLOW did not vote.

Motion: REP. VOGEL MOVED SB 409 BE CONCURRED IN AS AMENDED.

Discussion:

REP. VOGEL believes the bill is directed toward the actual care of the patient at the time. REP. SAYLES stated that peer groups do monitor their activities and upgrade the level of skills provided to their patients.

REP. BIRD asked Mr. MacMaster to clarify the language "doctor/patient" privilege on page 2, line 16 and asked if it was needed.

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3/26/93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karvl Winslow	✓		
Rep. Diana Wyatt	✓		

HR:1993

wp.rollcall.man

CS-09

HOUSE STANDING COMMITTEE REPORT

March 30, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 119 (third reading copy -- blue) be concurred in as amended.

Signed: Russ Fagg
Russ Fagg, Chair

And, that such amendments read:

Carried by: Rep. Jim Rice

1. Page 40, line 10.

Following: line 9

Insert: "(5) (a) if there is no surviving descendant, grandparent, or descendant of a grandparent, to the person of the closest degree of kinship with the decedent. Except as provided in subsection (5) (b), if more than one person is of that closest degree, those persons share equally.

(b) If more than one person is of the closest degree as provided in subsection (5) (a) but they claim through different ancestors, those who claim through the nearer ancestor shall receive to the exclusion of those claiming through a more remote ancestor."

2. Page 41, lines 12 through 16.

Following: "." on line 12

Strike: remainder of line 12 through "." on line 16

Insert: "The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

3. Page 42, lines 6 through 10.

Following: "." on line 6

Strike: remainder of line 6 through "." on line 10

Insert: "The share of each deceased descendant in the same generation as the surviving descendant is divided in the same manner, with the subdivision repeating at each succeeding generation until the property is fully allocated among surviving descendants."

Page 121, line 11.

Strike: "an applicable statute or"

te: 17

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March 30, 1993
Page 2 of 2

5. Page 121, lines 12 and 13.

Following: "distributed" on line 12

Strike: remainder of line 12 through "or" on line 13

6. Page 122, line 1.

Following: "If"

Insert: "an applicable statute or"

7. Page 122, line 2.

Following: "distributed"

Insert: "'by representation" or"

-END-

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3-26-93 BILL NO. SB 119 NUMBER 18

MOTION: SB 119 be concurred as amended

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	17	1

The University of
Montana

School of Law
The University of Montana
Missoula, Montana 59812-1071
(406) 243-4311

March 22, 1993

House Judiciary Committee
State Capitol
Helena, Montana 59620

Re: Senate Bill 119

Dear Committee Members:

I am writing you in support of the Senate Bill 119 which is scheduled for a hearing before you on Friday, March 26.

Scope of the Bill. The Bill primarily consists of four distinct parts:

- a. Revised Article II of the Uniform Probate Code;
- b. Revised Article VI of the Uniform Probate Code;
- c. Uniform Statutory Form Power of Attorney Act; and
- d. a repeal of most of Chapters 10, 11, 12, and 13 of Title 72 MCA -- "Supplementary" provisions on probate, administration, and persons under disability.

Summary of the Bill.

a. Revised Article II of the Uniform Probate Code. The Uniform Probate Code (UPC) was first proposed by the Conference of Commissioners on Uniform State Laws (Conference) in 1969. It has since been the model for most of the states in the country. The UPC was designed to simplify and shorten the probate process.

In those states which have adopted the Code, the probate process has been streamlined. However after over 20 years of working with the Code, the Conference concluded that improvements could be made. Thus, in 1990 the Conference proposed a revised Article II.

This proposal reflects years of hearings which afforded consumers, academics, and professionals the opportunity to shape a revised Article II. This "second generation" of the Uniform Probate Code has been endorsed by the American Association of Retired Persons.

Revised Article II includes changes in the intestacy statutes to bring them in touch with the current American family; it updates the rights of a surviving spouse on the death of a decedent spouse;

and it updates and expands rules of construction to cover trusts and a variety of instruments in addition to wills.

b. Revised Article VI of the Uniform Probate Code. When Montana adopted the UPC in 1974, it did not adopt the original version of Article VI of the UPC. Over one-half of the states did adopt Article VI. Since then, the Conference has had the benefit of twenty years of experience and completed its revision of this

The non-probate transfers on death provisions focus on multiple party accounts with banking institutions and on transfers of securities at death by stock brokers. The bill includes convenient forms which financial institutions may utilize. Those forms expressly indicate whether there are to be survivorship rights between the parties. Thus, some of the litigation concerning a dead depositor's intent should be eliminated. Further, a depositor has the option to name another person who will acquire ownership rights only upon the death of the depositor. While it is my understanding that the Montana Bankers Association initially had some reservations about these provisions, George Bennett advises me that the Association has dropped its opposition.

Securities dealers favor the legislation because it provides a convenient way for their investors to designate successor owners without post death administration.

c. Uniform Statutory Form Power of Attorney Act. In 1991 Montana adopted a "form power of attorney act" based upon Minnesota law. This Bill reflects the national Uniform Act. As with all uniform acts, it has the advantage of thoughtful input and uniform construction from the courts of other states. The Bill simply amends the existing Montana law to bring it in conformance with the uniform act.

d. Repeal of most of Chapters 10, 11, 12, and 13 of Title 72 MCA. These so called "Supplementary" provisions on probate, administration, and persons under disability were adopted by our Territorial Legislature in 1877. In many instances these provisions are unnecessary because the subject matter is covered by the Uniform Probate Code. In some instances, the provisions are inconsistent with the Uniform Probate Code. Thus the Bill simply repeals most of the provisions of Chapters 10, 11, 12, and 13.

Montana Activity on the Bill. In early 1992 Gary Bjelland, a Great Falls attorney, appointed a committee of the Trust, Estate, Tax, and Business Law Section of the State Bar of Montana to examine the changes to the national Uniform Probate Code and to consider other advisable changes to Montana's estate laws. The following attorneys participated in that Committee's review: Richard Baskett

House Judiciary Committee
March 22, 1993
Page 3

EXHIBIT #1
DATE 3-29-93
SB119

(Missoula), Pat Dougherty (Missoula), W. Bjarne Johnson (Great Falls), Kristen G. Juras (Great Falls), Dan McLean (Billings), David Niklas (Helena), and James W. Thompson (Billings). After several meetings and much debate, Senate Bill 119 has emerged. Last month we worked with Bob Pyfer of the Montana Credit Union Network. As the result, some changes were made in Article VI. We think this legislation will continue to serve the consumer -- i.e. the people of Montana.

Conclusion. Again, I urge your approval of this balanced bill which is designed to update a variety of Montana laws dealing with probate and related matters.

Sincerely,



E. EDWIN ECK
Professor

cc: Senator Mike Halligan

EXHIBIT 2
DATE 3-26-93
SB 119

UNIFORM PROBATE CODE

ARTICLE II

INTESTACY, WILLS, AND DONATIVE TRANSFERS (1990)

(With Revised Article I, Sections 1-107 and 1-201)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-NINTH YEAR
IN MILWAUKEE, WISCONSIN
JULY 13 - 20, 1990



WITH PREFATORY NOTE AND COMMENTS

THE ORIGINAL IS STORED AT THE HISTORICAL SOCIETY AT 225 NORTH ROBERTS STREET, HELENA, MT
9620-1201. THE PHONE NUMBER IS 444-2694.

SENATE BILL NO. 119

E. Edwin Eck
University of Montana
School of Law
Missoula, Montana 59812

243-6534

A. MATTERS COVERED IN SENATE BILL NO. 119 ("THE BILL")

1. Revised Article II of the Uniform Probate Code (Intestacy, Wills, and Donative Transfers (1990)) - [Sections 3 through 72 of the Bill]
2. Revised Chapters 10, 11, 12, and 13 of Title 72 MCA affecting "Supplementary" Provisions on Intestate Succession, Wills, Probate, Administration, and Persons Under Disability - [Sections 76 through 80 of the Bill]
3. Definition of "Stepchild" for the purposes of the Montana Inheritance Tax (MCA section 72-16-313) - [Section 81 of the Bill]
4. Effective Date provision of section 72-36-206 (Montana Trust Code) dealing with conveyances to trusts prior to October 1, 1989 - [Sections 82 and 134 of the Bill]
5. Revised Article VI of the Uniform Probate Code (Nonprobate Transfers on Death (1989)) - [Sections 83 through 112 of the Bill]
6. Uniform Statutory Form Power of Attorney Act - [Sections 113 through 131 of the Bill]

B. HISTORY OF THE UNIFORM PROBATE CODE IN MONTANA

C. REVISED ARTICLE II OF THE UNIFORM PROBATE CODE (INTESTACY, WILLS, AND DONATIVE TRANSFERS (1990)) - [Sections 3 through 72 of the Bill]

1. Intestate Succession. The changes recognize the increasing portion of our population who have been married more than once and who have stepchildren and children by previous marriages. The major provisions can best be summarized by examples:

Example 1. Decedent is survived by a spouse, no parents, and descendants who are also descendants of the surviving spouse. Surviving spouse has no other descendants.

Surviving spouse will receive the entire intestate estate. [No change from existing law.]

-

Example 2. Decedent is survived by a spouse, a parent, and no descendants.

Surviving spouse will receive the first \$200,000 plus $\frac{3}{4}$ of the remaining intestate estate. The surviving parent will receive the remainder. [Under existing law, the surviving parent would receive nothing.]

-

Example 3. Decedent is survived by a spouse, no parent, and descendants who are also descendants of the surviving spouse. Surviving spouse has other descendants who are not descendants of the decedent.

Surviving spouse will receive the first \$150,000 plus $\frac{1}{2}$ of the remaining intestate estate. The decedent's descendants will receive the remainder. [Under existing law, the decedent's descendants would receive nothing.]

-

Example 4. Decedent is survived by a spouse, no parent, and descendants who are not descendants of the surviving spouse.

Surviving spouse will receive the first \$100,000 plus $\frac{1}{2}$ of the remaining intestate estate. The decedent's descendants will receive the remainder. [Under existing law, the surviving spouse would receive $\frac{1}{2}$ of the intestate estate if the decedent had one child (or the issue of one child). The child (or issue) would receive the remainder. If the decedent had more than one child (or the issue of more than one child), the surviving spouse would receive $\frac{1}{3}$ of the intestate estate. The children (or issue) would receive the remainder.]

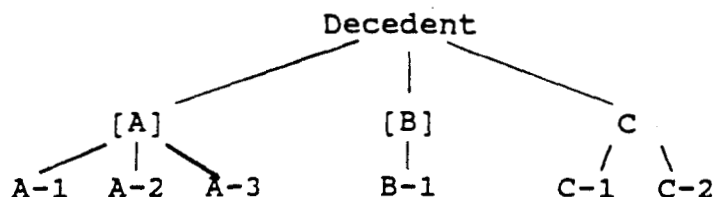
-

Example 5. Decedent is not survived by any spouse, any descendants, any parents, any siblings, any grandparents, nor any descendants of grandparents. Decedent's only surviving relative is a third cousin (8th degree of relationship).

The intestate estate would pass to the State of Montana. The remote relative ("laughing heir") is excluded. [Under existing law, the third cousin would receive the intestate estate.]

Note: Under the Bill, if the decedent had any surviving grandparents, uncles, aunts, first cousins or descendants of first cousins, those relatives would take before the State of Montana.

Example 6. Decedent is not survived by any spouse. Two of decedent's children, A and B, predecease the decedent. The decedent's third child, C, survives. A had three children, A-1, A-2, and A-3 who survived the decedent. B had one child, B-1, who survived the decedent. C has two children, C-1 and C-2, who survived the decedent.



C takes 1/3 of the intestate estate. The other two 1/3 shares are combined into a single share (amounting to 2/3 of the estate) and is distributed to A-1, A-2, A-3, and B-1 equally (1/6 apiece). People equally related to the decedent receive the same share. [Under existing law, A-1, A-2, and A-3 would have received their parent's 1/3 share. Thus, each of them would have received 1/9 of the estate. B-1 would have received his parent's 1/3 share. The decedent's grandchildren would have been treated differently.]

2. Elective Share of Surviving Spouse. The Elective Share provisions of the Uniform Probate Code protect a surviving spouse from disinheritance by the decedent spouse. The Bill continues this protection but recognizes a partnership (or marital-sharing) theory of marriage. As a result, the Bill would increase the entitlement of a surviving spouse in a long-term marriage in cases in which the marital assets were disproportionately titled in the decedent's name. The Bill would decrease or even eliminate the entitlement of a surviving spouse in a long-term marriage in cases in which the marital assets were more or less equally titled or disproportionately titled in the surviving spouse's name. Further, the Bill would decrease or even eliminate the entitlement of a surviving spouse in a short-term, later-in-life, marriage in which neither spouse contributed much; if anything, to the acquisition of the other's wealth. However, a special supplemental elective-share amount is provided in cases in which the surviving spouse would otherwise be left without sufficient funds for support.

The elective share is increased to one-half (50 percent) for marriages that last 15 years or longer. However, in the short-term marriage, the elective share is decreased. For example, a marriage of one year entitles a spouse to an elective share of only 3 percent. For each year up to 15 years, the percentages increases. At year 15, the surviving spouse's share reaches a full 50 percent. This staged increase signifies the increased contribution by the surviving spouse in the accumulation of property by the deceased spouse. It also recognizes the fact of second marriages in which there may be other familial obligations with a better claim upon the deceased spouse's property until the marriage has sufficient longevity to merit a full 50 percent share for the surviving spouse.

The augmented estate has been modified as well. Unlike exiting law, the augmented estate takes the net assets of the surviving spouse into account, instead of just the property that the surviving spouse receives from the decedent. In order to determine the elective share, all of the assets in the marriage must be included.

These revised elective share provisions have been endorsed by the Assembly of the National Association of Women Lawyers on the unanimous recommendation of its Executive Board.

3. Spouse and Children Unprovided For in Wills. These provisions continue the protection of existing law to a spouse who marries after the decedent has executed a will. Similar protection is provided for children who were born or adopted after the execution of the will. The new provisions include only refinements of existing law.
4. Exempt Property and Allowances. These provisions continue the homestead, exempt property, and family allowances of existing law. Some amounts are increased where dollar limits are imposed.
5. Wills, Will Contracts, and Custody and Deposit of Wills. A will is a formally executed document that establishes who will have a person's property at death. But for the entitlements inherent in the family noted above, the law favors wills and honors the intent of the person who makes one. The consistent policy of the Uniform Probate Code is to validate testamentary documents and to eliminate technical determinations of invalidity, where and when possible. The holographic will (carried over from the original to the revised Uniform Probate Code) is a primary example of this policy.

The revised Uniform Probate Code develops this liberal policy even further. A new provision permits a document (or writing added upon a document) that is not executed in accordance with the rules of execution for wills, to be given testamentary effect if it can be established by clear and convincing evidence that it was intended to be a will or intended to modify in some way a pre-existing will. In other words, this provision reduces formalistic court decisions which discard attempts at will making and will modification.

6. Rules of Construction Applicable Only to Wills. There is a need for rules of construction because the drafting of wills does not always take into account every contingency - even when drafting is careful and proper. There are some underlying principles that commonly link these rules of construction. One such principle is the principle of the testator's intent. In so far as possible, wills are construed to carry out the intent of the persons who make them.

An important rule of construction provides for lapsed devises. A lapsed devise is one to a person who predeceases the person who makes the will. The law has struggled with the problem of terminating such a devise (as opposing to saving it) by extending it to the next surviving generation. Generally, the debate has been resolved in the favor of statutory antilapse provisions for devises within a family that preserve the devise in the favor of those who are descendants of the deceased devisee.

The original Uniform Probate Code had an antilapse provision. The revised Uniform Probate Code contains a major effort to resolve the problems of antilapse statutes. The resolution includes both individual devises and class devises. If an individual devise is to a grandparent, a descendant of a grandparent, or a stepchild of the testator, then predeceasing the testator means that the devise will carry to the next generation of descendants of the devisee who live. For class gifts, which are gifts to unnamed but described common group, the prior death of a class member allows descendants of that class member to succeed to the class member's share.

Of course, the preceding presupposes that there is no express substitute devisee in the will. If an express substitute devisee is named in the will, the substitute will take the gift if there is a lapse.

7. Rules of Construction Applicable to Wills and Other Governing Instruments. Construction rules, such as antilapse provisions, are extended beyond wills in the revised Uniform Probate Code. This, perhaps, is the most important innovation to be found in the revised Uniform Probate Code. There are rules of construction for other donative instruments -- i.e. trusts, insurance contracts, POD provisions in account contracts, and TOD provisions on investment securities. An enormous quantity of property passes in transfers which are nonprobate in character.
8. General Provisions Concerning Probate and Nonprobate Transfers. Rules relating to disclaimers and the effect of divorce and the effect of homicide on gratuitous transfers have been refined and expanded to cover nonprobate transfers.

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The Revised Article II has received the endorsement of American Association of Retired Persons. For more information contact:

Melissa B. Burkholder
Consumer Issues Team Leader
AARP State Legislation Department
601 E Street, N.W.
Washington, DC 20049
(202) 434-3050

D. REVISED CHAPTERS 10, 11, 12, AND 13 OF TITLE 72 MCA AFFECTING "SUPPLEMENTARY" PROVISIONS ON INTESTATE SUCCESSION, WILLS, PROBATE, ADMINISTRATION, AND PERSONS UNDER DISABILITY - [Sections 76 through 80 of the Bill]

The bulk of these sections were adopted by our Territorial Legislature in 1877. With occasional amendments, these provisions have been continued over the years.

The provisions were continued after Montana adopted the Uniform Probate Code in 1974. In many instances the provisions of Chapters 10, 11, 12, and 13 are unnecessary because the subject matter is covered by the Uniform Probate Code. In some instances, the provisions are inconsistent with the Uniform Probate Code. Thus the Bill simply repeals most of the provisions of Chapters 10, 11, 12, and 13.

In a few instances, the provisions remain valuable portions of statutory law. However, some of those provisions needed rewriting in "twentieth century" English. Thus, for example, the sections on determining degrees of relationship (MCA sections 72-11-101 through 72-11-104) have been rewritten and are found in Sections 76 through 79 of the Bill.

E. DEFINITION OF "STEPCHILD" FOR THE PURPOSES OF THE MONTANA INHERITANCE TAX (MCA SECTION 72-16-313) - [Section 81 of the Bill]

In 1991, the inheritance tax exemption for transfers to stepchildren was expanded. MCA section 72-16-313(2)(b) included a reference to a "stepparent" but did not include a definition of the term. Section 81 of the Bill incorporates the definition found in revised Article II of the Uniform Probate Code.

F. EFFECTIVE DATE PROVISION OF SECTION 72-36-206 (MONTANA TRUST CODE) DEALING WITH CONVEYANCES TO TRUSTS PRIOR TO OCTOBER 1, 1989 - [Sections 82 and 134 of the Bill]

In 1991, subsection (8) was added to section 72-36-206 to rectify title issues which could arise when a deed purports to make a transfer to a named trust, rather than to a designated trustee. Unfortunately, subsection (1) contained language indicating that the section did not affect conveyances recorded prior to October 1, 1989 (the effective date of the Montana Trust Code). Arguably the benefits of subsection (8) were limited to those deeds recorded after October 1, 1989.

Section 82 of the Bill eliminates this date restriction and Section 134 of the Bill applies this modification retroactively.

G. REVISED ARTICLE VI OF THE UNIFORM PROBATE CODE (NONPROBATE TRANSFERS ON DEATH (1989)) - [Sections 83 through 112 of the Bill]

The original Uniform Probate Code promulgated by the National Conference of Commissioners on Uniform State Laws and the American Bar Association in 1969 included an Article VI relating to Nonprobate Transfers on Death. To date, over one-half of all the states have adopted the multiple party accounts provisions of Article VI even though some of those states have not adopted the Uniform Probate Code in its entirety. However, Montana has yet to adopt the provisions relating to multiple party accounts.

In 1989, the National Conference of Commissioners revised Article VI and included new provisions for the Transfer on Death (TOD) of securities.

1. Multiple-Person Accounts. Sections 84 through 102 deal with accounts at financial institutions (banks, savings and loan associations, credit unions, etc.). Checking accounts, savings accounts, certificates of deposit, and share accounts are covered by these provisions.

- a. Forms. Section 87 of the Bill provides convenient forms which financial institutions may utilize.

These forms enable a person establishing a multiple-party account to state expressly whether there are to be survivorship rights between the parties.

The significant consumer benefit of these provisions is that a depositor is forced to consciously address the issue of whether or not

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another individual is to receive survivorship benefits in an account. More than occasionally, litigation arises after the death of a depositor concerning the depositor's "intent" to provide a survivorship benefit to another. Perhaps the depositor did not realize that the language concerning survivorship benefits was buried in the form creating the account. Perhaps one of several children was named on a "joint" account form because a parent wanted a nearby child to handle some transactions with the account. Perhaps the depositor's estate plan will be upset if a survivorship condition is imposed. A depositor who uses a form provided by the Uniform Probate Code has a clear choice whether or not to create a right of survivorship.

Further, a depositor can simply name another who will acquire ownership rights only upon the death of the depositor. Such is known as a Pay on Death (POD) account.

Finally, a depositor can designate an agent under a power of attorney designation. The agent has no ownership rights but can make account transactions.

- b. Rights of Creditors and Others. Section 94 of the Bill makes it clear that a transfer resulting from a right of survivorship or a POD designation is liable to the estate of the decedent depositor to discharge any remaining unpaid claims against the estate and any unpaid family, homestead, and exempt property allowances.
 - c. Protection of Financial Institutions. Sections 96 through 102 of the Bill provide substantial protections for the financial institution. For example, Section 99 protects a financial institution that makes a payment pursuant to an account with an agency designation, even though the agency may have been terminated at the time of payment due to disability, incapacity, or death of the principal.
2. TOD Security Registration Act. Sections 103 through 112 deal with securities, including stocks, mutual fund shares, and accounts maintained by brokers and others to reflect a customer's holdings of securities ("street accounts").

- a. Registration in "Beneficiary Form". Section 105 permits registration in "beneficiary form". Under the definition of Section 103(1), "beneficiary form" means a registration of a security that indicates both the present owner of the security and the intention of the owner regarding the person who will become the owner of the security upon the death of the owner. Such can be accomplished by using the words "transfer on death", "TOD", "pay on death", and "POD".
- b. Rights of Creditors. Section 111(2) of the Bill makes it clear that a transfer resulting at death does not limit the rights of creditors of security owners.
- c. Protection of Registering Entity. Section 110 of the Bill provides protection to the registering entity which registers a transfer in good faith.

These TOD provisions received the official endorsement of the Securities Industry Association (SIA). The SIA is the trade association representing more than 600 securities firms headquartered throughout the United States and Canada.

Nothing in Article VI of the Uniform Probate Code (UPC) is inconsistent with the Uniform Commercial Code (UCC). In fact the Commissioners' comments under several sections of Article VI of the UPC include references to related sections in the UCC.

As noted, the revised Uniform Probate Code has received the endorsement of American Association of Retired Persons.

H. UNIFORM STATUTORY FORM POWER OF ATTORNEY ACT - [Sections 113 through 131 of the Bill]

The Uniform Statutory Power of Attorney Act provides legislative sanction to a statutory form that can be used instead of individually-drafted forms. The use of the statutory form (Section 113 of the Bill) is supported by the expressed authority of the State.

In 1991, a similar provision was enacted in Montana. That provision was based upon an earlier version of Minnesota law. To a great extent, the Uniform Act and the Minnesota statute are similar. However, the Uniform Act is superior in the following respects:

1. Uniformity. The Uniform Act has the benefits of uniformity, including the benefit of case law from other jurisdictions.

2. Fraud. The Uniform Act reduces the possibility of a fraudulent increase in the powers granted an agent. To grant a power under the Uniform Act, the principal must sign his (her) initials on a line in front of the specified power. Existing law merely requires the placement of an "X".
3. Commodity Transactions. Under the Uniform Act a principal may grant an agent authority to engage in stock and bond transactions but not grant the agent authority to engage in more risky commodity and option transactions. Existing law lumps all of these transactions together.
4. Government Benefits. The Uniform Act provides express authority to engage in transactions concerning benefits from social security, medicare, medicaid, and other governmental programs. Existing law does not have express authority to engage in such transactions.
5. Indemnification. The Uniform Act includes indemnification provisions to anyone who has relied upon the power of attorney. Existing law does not include similar provisions. Thus third parties are less likely to recognize powers of attorney executed under existing law.
6. Retirement Benefits. The Uniform Act provides express authority to engage in transactions concerning retirement benefits. Existing law does not include similar provisions.
7. Concise. The Uniform Act is more concise than existing law. Section 115 of the Bill includes several provisions relating to the construction of powers. Existing law repeats similar construction provisions in 10 separate sections.
8. Gifts. The Uniform Act does not include provisions authorizing the agent to make gifts. Existing law includes express provisions for gifts. Since the Power of Attorney is likely to be signed without the assistance of counsel, the dangers of granting such an express power is not likely to be apparent to the principal.

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UNIFORM STATUTORY FORM
POWER OF ATTORNEY ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS NINETY-SEVENTH YEAR
IN WASHINGTON, D.C.
JULY 29 - AUGUST 5, 1988



WITH PREFATORY NOTE AND COMMENTS

Approved by the American Bar Association
Honolulu, Hawaii, August 9, 1989

original is stored at the Historical Society at 225 North Roberts Street, Helena, MT
59601-1201. The phone number is 444-2694.

EXHIBIT

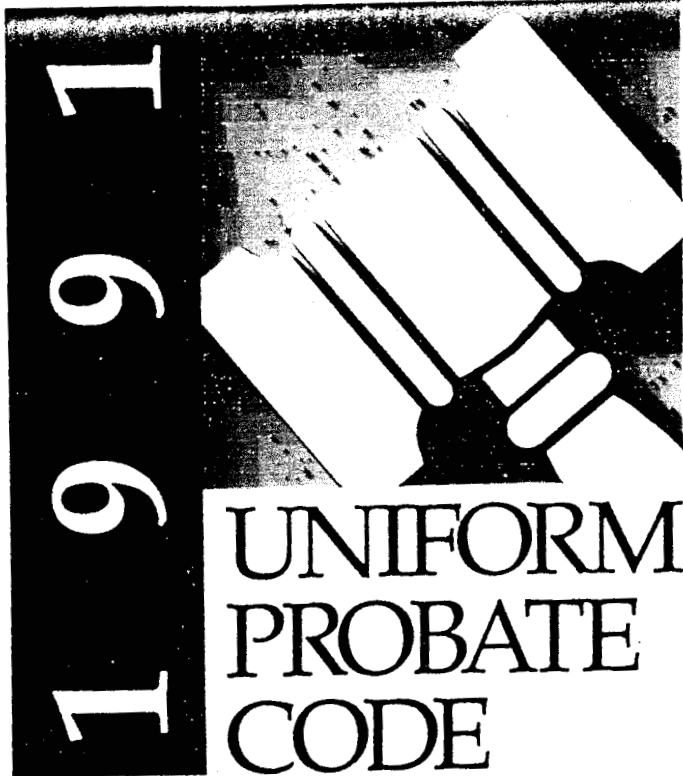
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The original is stored at the Historical Society at 225 North Roberts Street,

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CODE NONPROBATE TRANSFERS (1989)

where notary public who drafted deed testified that grantor told him she wanted to leave real estate to grandson but that she wanted security for herself, and grandson lived with grantor prior to grantor's death and made repairs, lived in, and paid taxes on house. *Vigil v. Sandoval*, App.1987, 741 P.2d 836, 106 N.M. 233.

5. Letter of intent

Letter of intent as to distribution of father's estate, entered into by daughter and son, did not constitute binding contract; although letter recited that parties intended to take steps necessary to obtain the equitable distribution spelled out therein, no further steps were taken and daughter

testified that she had viewed letter as proposal containing ideas which had to be reviewed with other family members before they became effective. *Butler v. Hardy*, Me.1990, 576 A.2d 202.

6. Sale agreement

Evidence supported conclusion that sale agreement, under which daughter agreed to sell her inheritance from father to son in return for \$650 previously loaned by son and his agreement to pay all inheritance taxes, was valid; agreement was unambiguous, written by daughter in her own hand, was duly signed and witnessed, and recited consideration for promise. *Butler v. Hardy*, Me.1990, 576 A.2d 202.

ARTICLE VI

NONPROBATE TRANSFERS ON DEATH (1989)

Historical Notes

A Revised Article VI of the Uniform Probate Code [Nonprobate Transfers on Death (1989)], was approved by the National Conference of Commissioners on Uniform State Laws in 1989. The complete text of the revised article, as well as the prefatory note and comments, are set forth in this supplement.

See material relating to the prior Article VI, supra, this supplement.

Adoption of Uniform Multiple-Person Accounts Act and Uniform TOD Security Registration Act

Note that Parts 2 and 3 of Revised Article 6 have also been adopted as the free-standing Uniform Multiple-Person Accounts Act and Uniform TOD Security Registration Act, respectively. See the supplement to Volume 8A.

Committees

The Committee that acted for the National Conference of Commissioners on Uniform State Laws in preparing the Uniform Probate Code Article VI—Nonprobate Transfers on Death—(1989) was as follows:

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Maurice A. Hartnett, III, Chambers, Court of Chancery, 45 The Green, Dover, DE 19901
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Richard V. Wellman, University of Georgia, School of Law, Athens, GA 30602

Review Committee

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Timothy J. Cronin, Jr., New England School of Law, 154 Stuart Street, Boston, MA 02116
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Ex-Officio

Michael P. Sullivan, P.O. Box 35286, 5701 Green Valley Drive, Minneapolis, MN 55435, *President, NCCUSL*
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Henry M. Kittleston, P.O. Box 32092, 92 Lake Wire Drive, Lakeland, FL 33802 *Chair-*

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March 26, 1993

BY FACSIMILE

Honorable Russell Fagg, Chairman, and
Members of the House Judiciary Committee
Montana Capitol
Helena, MT 59624

Re: Senate Bill 119 - Revisions to Uniform Probate Code

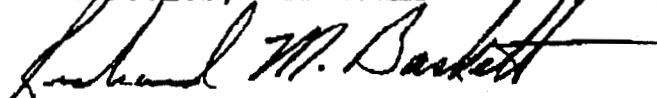
Dear Representative Fagg and Members of the House Judiciary Committee:

As a member of the sub-committee of the Montana State Bar that was responsible for drafting the proposed revisions to the Uniform Probate Code, I was hoping to attend today's hearing on Senate Bill 119 to testify in support of it. Scheduling conflicts, however, prevent me from appearing. I still wish to submit my written support for this important legislation. The proposed revisions are designed to modernize the probate code, in part by recognizing changes in social conditions. For example, there is greater recognition of second and third marriages and the problems created when each spouse has children of prior marriages. Although this is not the sole purpose of the revisions, it is a common thread running through many of the changes. For example, changes are proposed to the amount that a spouse can elect against the share of a decedent. Under present law there is a flat percentage that can be elected, regardless of the length of the marriage. The revised code would provide for an increasing percentage for each year of marriage, until after 15 years the surviving spouse would have a 50 percent elective share amount.

I will leave the more detailed explanation of the changes to Professor Eck and the other members of the sub-committee who will be testifying at today's hearing. I do hope you will give close consideration to their comments and will vote favorably on their recommendation that this legislation be enacted.

Very truly yours,

DATSOPOULOS, MacDONALD & LIND, P.C.



Richard M. Baskett

RMB/jmc

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 119
DATE March 26, 1993 SPONSOR(S) M. Halligan
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Bruce MacKenzie	Securities Industry Assoc.	✓	
Joan Hines	MT Credit Union League	✓	
EO Ech	Unitarian Lnw (Cocaine)	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.